12

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1911

No. [redacted] 176

LEWIS P. WINGERT, APPELLANT,

*vs.*

THE FIRST NATIONAL BANK OF HAGERSTOWN ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

FILED DECEMBER 20, 1909.

(21,939)

(21,939)

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

## No. 713.

LEWIS P. WINGERT, APPELLANT,

*vs.*

THE FIRST NATIONAL BANK OF HAGERSTOWN ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

INDEX.


| | Page. |
|---|---|
| Caption | *a* |
| Transcript from the circuit court of the United States for the district of Maryland | |
| Caption | 1 |
| Bill of complaint | 1 |
| Exhibit A—List or schedule of acts of Congress | 8 |
| Exhibit C—Letter of Lewis P. Wingert to the President and Board of Directors of the First National Bank of Hagerstown, Maryland, March 9, 1909 | 8 |
| Motion for preliminary injunction and order of court thereon | 9 |
| Marshal's return attached to above | 10 |
| Bond pursuant to restraining order | 11 |
| Subpœna and marshal's return | 12 |
| Affidavit of Lewis P. Wingert on behalf of complainant | 13 |
| William Wingert on behalf of complainant | 15 |
| Joseph Murdock on behalf of complainant | 17 |
| Order of appearance for defendants | 18 |
| Answer of First National Bank of Hagerstown, Maryland | 19 |
| Exhibit—Plat referred to in defendant's answer | 22*a* |
| Joint and several answer of Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, J. Grason Steffey, Walter D. Willson, and Harvey H. Heyser | 23 |
| Answer of S. Lewis Lamkin | 29 |

Page.
Affidavits on behalf of defendants ..... 32
Affidavit of Lewis Rose ..... 32
Samuel Emmert ..... 33
Jacob E. Fisher ..... 35
Wm. L. Hammond ..... 36
John W. Stonebreaker ..... 38
Charles A. Little ..... 39
Answer of William Wingert ..... 42
Complainant's motion not to receive the answer of the First National Bank ..... 43
Affidavits on behalf of complainant ..... 44
Affidavit of Lewis P. Wingert ..... 44
William Wingert ..... 45
William Wingert ..... 46
Exhibit—Picture, filed on behalf of complainant ..... 47
Exhibit—Picture, filed on behalf of complainant ..... 48
Affidavit of William Wingert and Lewis P. Wingert on behalf of complainant ..... 49
Affidavit of Frank W. Mish on behalf of defendants ..... 50
Order of court overruling motion of complainant not to receive answer of the First National Bank ..... 51
Decree of court denying motion for preliminary injunction and dissolving restraining order ..... 51
Replication ..... 52
Petition of complainant for restraining order and order of court thereon. 53
Order of court limiting defendants' time for taking testimony ..... 58
Petition for extension of time of taking defendants' testimony and order of court thereon ..... 58
Petition for extension of time for filing testimony of the defendants and order of court thereon ..... 61
Complainant's testimony ..... 63
Deposition of Edward Oswald ..... 63
Lewis P. Wingert ..... 65
William Wingert ..... 72
Rufus Hays ..... 85
Owen D. Sherley ..... 88
Sylvester Young ..... 90
S. M. Bloom ..... 94
Joseph Kausler ..... 96
Andrew J. Schindel ..... 99
William H. Tice ..... 102
Joseph Kausler (recalled) ..... 104
John D. Newcomer ..... 105
Claggett D. Spangler ..... 106
Milton Kohler ..... 108
W. L. Middlekauff ..... 110
George B. McC. Wolf ..... 111
John D. Kieffer ..... 112
James E. S. Pryor ..... 114
Earl Troup ..... 116
Complainant's exhibits ..... 121
Exhibit No. 1—Diagrams ..... 121
No. 2—Diagrams ..... 121

Page.
Exhibit No. 3—Diagrams ..... 123
No. 4—Diagrams ..... 125
Exhibit "For Sale" ..... 127
"Exhibit Photograph of Bank" ..... 129
Exhibit L. P. W.—Letter of March 9, 1909 ..... 131
Defendants' testimony ..... 132
Deposition of Harvey Heyser ..... 133
Frank W. Mish ..... 135
Harry W. Rouskulp ..... 156
C. M. Horst ..... 160
Nervin J. Brandt ..... 165
J. H. Snavely ..... 183
Rufus Crim ..... 187
H. S. Snavely ..... 190
L. T. Beachley ..... 192
Landon Kerney ..... 193
Harry D. Burger ..... 196
William O. Diehl ..... 199
J. Winger Draper ..... 202
C. McP. Smith ..... 204
Frank M. Wroe ..... 206
E. E. Dyer ..... 208
J. E. Downing ..... 209
Earl Troup ..... 210
George F. Burkhart ..... 212
Wolfgang Newcomer ..... 216
Daniel W. Doub ..... 228
J. O. Snyder ..... 234
Lewis Rose ..... 241
Dr. Charles McCauley ..... 246
Samuel Emmert ..... 255
J. Grason Steffey ..... 261
Walter D. Willson ..... 267
Francis H. Miller ..... 273
Defendants' exhibits ..... 281
Defendants' Exhibit Pearson, Executor of Bowman ..... 281
Defendants' Exhibit Deed ..... 283
Defendants' Exhibit Decree ..... 285
Defendants' Exhibit Furst, Executor of Bowman ..... 286
Defendants' Exhibit—Consent of Charles McCauley, M. D., and Daniel W. Doub, committee of Harry McCauley, *non compos*, and of Charles McCauley, M. D., to improvements ..... 288
Defendants' Exhibit Organization Certificate ..... 290
Defendants' Exhibit List of Stockholders ..... 294
Defendants' Exhibit Consent of Stockholders to Improvements ..... 299
Defendants' exceptions to testimony and depositions of complainant ..... 310
Agreement of counsel that plat marked Exhibit No. 4, filed by the complainant, shall be admitted as testimony ..... 316
Petition of complainant to have cause set for final hearing and order of court thereon ..... 317
Plaintiff's exceptions to defendants' testimony ..... 318
Opinion ..... 324
Final decree ..... 329

Page.
Complainant's prayer for appeal, assignment of errors, and order of court allowing appeal ..... 330
Appeal bond ..... 332
Citation ..... 333
Order to transmit record ..... 334
Clerk's certificate ..... 334
Motion to advance cause ..... 335
Assignment of cause for argument ..... 336
Argument of cause ..... 336
Opinion ..... 337
Decree ..... 341
Petition for appeal to Supreme Court ..... 342
Assignment of error ..... 342
Order allowing appeal ..... 343
Appeal bond ..... 343
Citation ..... 344
Order to transmit record ..... 345
Clerk's certificate ..... 345

*Transcript of Record.*

UNITED STATES OF AMERICA,
*Fourth Circuit, ss:*

At a United States Circuit Court of Appeals for the Fourth Circuit, Begun and Held at the Court House, in the City of Richmond, on the First Tuesday in November, Being the Second Day of the Same Month, in the Year of Our Lord One Thousand Nine Hundred and Nine.

Present: Hon. Nathan Goff, Circuit Judge; Hon. William H Brawley, District Judge; Hon. Henry G. Connor, District Judge.

Among other were the following proceedings, to-wit:

No. 937.

LEWIS P. WINGERT, Appellant,
versus
FIRST NATIONAL BANK OF HAGERSTOWN, MARYLAND, FRANK W. MISH, ISAAC ANKENEY et al., Appellees.

Appeal from the Circuit Court of the United States for the District of Maryland, at Baltimore.

Be it remembered that heretofore, to-wit; on the 28th day of September, 1909, transcript of the record of the said Circuit Court in the said entitled cause, was transmitted to and filed in our said Circuit Court of Appeals here, which is as follows, to-wit:

# TRANSCRIPT OF RECORD.

UNITED STATES OF AMERICA,
DISTRICT OF MARYLAND, } TO-WIT:

At a Circuit Court of the United States for the District of Maryland, begun and held at the Courthouse in the City of Baltimore, on the first Monday of April, (being the fifth day of the same month), in the year of our Lord one thousand nine hundred and nine.

Present: The Honorable Thomas J. Morris, Judge of the Maryland District; John C. Rose, Esq., Attorney; John F. Langhammer, Esq., Marshal; Arthur L. Spamer, Clerk.

Among others were the following proceedings, to-wit:

| | |
|---|---|
| Lewis P. Wingert, Complainant,<br>*vs.*<br>First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles M. Little, Francis H. Miller, Charles McCauley, Wolgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, Harvey H. Heyser, S. Lewis Lamkin, Defendants. | In Equity. |

**BILL OF COMPLAINT.**

(2) Filed March 10, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT IN AND FOR THE DISTRICT OF MARYLAND.

| | |
|---|---|
| Lewis P. Wingert<br>*vs.*<br>First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles M. Little, Francis H. Miller, Charles McCauley, Wolgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, Harvey H. Heyser, S. Lewis Lamkin, | In Equity. |

To the Honorable the Judges of the said Court:

1. Lewis P. Wingert, a citizen of the State of Maryland, as well for himself as for such other stockholders of the First

National Bank of Hagerstown, Maryland, duly organized under the National Banking acts, who agreeing to contribute to the expenses of this suit may become parties thereto, brings this bill of complaint against the said, the First National Bank of Hagerstown, Maryland, and against Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles M. Little, Francis H. Miller, Charles McCauley, Wolgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, the directors thereof, Harvey H. Heyser, cashier of said Bank, and S. Lewis Lamkin.

2. And thereupon your orator avers that by an Act of the
(3) Congress of the United States of America, approved the third day of June A. D. 1864, and by divers supplements thereto of which said Act, a list or schedule (marked Exhibit "A") is hereto annexed and to which several acts reference is craved as though the same were set forth at large as part of this bill there was and now is established by law in the City of Hagerstown and State of Maryland, and within the territorial limits of the jurisdiction of this Court, a body politic and corporate, known by the name of the First National Bank of Hagerstown, Maryland, with all the powers and privileges which by said law and by any acts and supplements thereto relating duly approved are granted and conferred and no others, and that the said Frank W. Mish is the President and one of the directors thereof and the said Ankeney, Horst, Little, Miller, McCauley, John D. NewComer, Wolfgang M. Newcomer, Wingert Steffey, Wilson are the directors of the said Bank and Harvey H. Heyser the cashier thereof.

3. And your orator further avers that the said First National Bank of Hagerstown, Maryland, has an authorized Capital stock of one hundred thousand dollars, divided into 10,000 shares of the par value of ten dollars per share, that the whole amount of said stock has been subscribed and paid in full, that said stock has a market value above par, and that the business and affairs of said bank are in an eminently prosperous condition.

(4)

4. And your orator further avers that he is the owner of one hundred and fifty-one shares of said Capital stock of said Company and as such stockholder is interested in the proper and lawful administration of the affairs of said bank, and that the same should be conducted in such manner as in no wise to jeopard the chartered privileges of said Bank and franchises of said Corporation and he will be damaged by any violation thereof.

5. That said First National Bank of Hagerstown, Maryland is seized and possessed of a certain piece or parcel of ground with improvements thereon, situated and lying on the North side of West Washington Street, in Hagerstown, *In* Washington County and State aforesaid, said lot has a frontage of forty-one feet more or less on said West Washington Street, and extends Northward therefrom with uniform width a distance of two hundred and forty feet to a public alley and is bounded on the West side by a public alley ten feet wide and on the East side by a private residence, and is the Eastern half of lot designated as lot number eighty (80) on a plot of lots of said town of Hagerstown, made by S. S. Downin, Surveyor. That the lot or parcel of ground aforesaid is improved by a three story brick building, which said building covers the *the* entire frontage of said lot on the North side of said West Washington Street and extends Northward from West Washington Street aforesaid along the public alley aforementioned, a distance of forty feet, also with bank-vault and basement, all equipped with modern conveniences, and in good repair, and that the remainder of said lot is unimproved except for a few small structures, which are inconsequential, and of little value.

That the first floor of said building is now occupied in part by the said First National Bank for a banking room, Directors room, and accessories, and in part, together with the second and third floors is leased by the Bank to a tenant thereof.

6. And your orator further avers that having been informed that the said directors of said Bank contemplated tearing down the afore described Bank building now standing on the aforesaid lot of ground and erecting in its stead on said lot at an expenditure of the bank's funds of about sixty thousand dollars, a six story office building of which the first story was to be designed for the use of bank, and the remaining five (5) stories were to be designed to provide a number of small rooms and suits for rental to the public as places of business and offices; and being advised that such contemplated action on the part of said bank was ultra vires the Corporation and prohibited by the provisions of the National Banking Acts; and that a diversion of so large a portion of the funds of the bank from its legitimate business to such illegal purposes was *notconsonant* with proper banking principles addressed a formal protest to the President and directors of said Bank against said contemplated action, calling attention to its illegal character and demanding that the same be abandoned. And your orator files herewith a copy of said letter of protest marked

Exhibit "C" which is prayed to be taken at large as a part of this bill.

7. And your orator further avers that said protest having been delivered to the President of the said Bank at its banking offices that notwithstanding and in defiance of said protest and demand on the part of your orator that said contemplated illegal action by said Bank, its directors and officers should not be consummated; a special meeting of the directors of the said, the First National Bank was subsequently held on or about March 9th, 1909, whereat it was decided to tear down and demolish and utterly destroy the present three story brick building and bank-vault, erected as aforesaid on its said Washington Street lot and to proceed with the erection in its stead of a six story office building of the character described in paragraph six of this Bill. That at the same meeting the said directors employed a certain S. Lewis Lamkin contractor and builder one of the defendants named herein to superintend and direct the work of tearing down the present structure, and the work of erecting and equipping the authorized six story office building and bank-vault aforementioned.

8. And your orator charges that the said Bank is prohibited by a proper construction of Section 5137 United States (6) Compiled Statutes Title 62 National Banks from having the right to destroy and utterly demolish its present Bank building and raze the same to the ground with the intention and design to erect in its stead a six story office building and cannot by law have the right to change modify or improve said bank building more than shall be necessary for its immediate accommodations in the transaction of its business. And the said Bank cannot by law enter upon the real estate business and construct and maintain a large and expensive office building to be rented out for money rent, and that such actings and doings are in violation of law and of the objects designs and purposes intended to be served by the creation of such corporation.

9. And your orator charges that the expense and outlay of the authorized work and improvements of said six story office building will exceed in the aggregate the sum of sixty thousand dollars, and that such sum will be paid out of monies of the Bank withdrawn from its legitimate business: that the said course of building which is now threatened to be pursued by said Bank will afford just ground for action by the government for the forfeiture of its charter and may have speculative effect on the value of its capital stock, all of which will

work irreparable injury to the interests of your orators and the other stockholders.

10. And your orator further shows that said Board of directors are about to proceed with the work of destroying the present building with the intention and design of erecting the six story office building as aforesaid without having obtained and without having sought to obtain the consent of the shareholders of the Bank, and the work of demolition will be begun in the near future unless the said directors, their agents, servants and workmen be restrained by an order or injunction of this Court. And that your orator is powerless to protect his interests and that of the other shareholders without recourse to this Court.

(7)

11. And your orator further alleges that he was a shareholder in the First National Bank to the extent of one hundred and fifty-one shares of its stock as heretofore set forth in paragraph three of this Bill at the time of the transaction of which he complains herein to-wit: the decision of the said directors at said special directors meeting to proceed with the illegal act of erecting such office building and that this suit is not a collusive one to confer on this Court jurisdiction of this case of which this Court would not otherwise have *do*gnizance.

12. And your orator further shows that the matter in dispute exceeds the sum or value of two thousand dollars exclusive of interest and costs; and that this suit is of a civil nature arising under the laws of the United States.

To The End Therefore

1. That the defendants, their agents and servants and each and every of them may be restrained preliminarily, provisionally and perpetually by the order and injunction of this Honorable Court, from erecting on the site of the present bank building or on any other lot belonging to or which may be acquired by said Bank, a six story office building, and from tearing down or demolishing or destroying the present bank building of the First National Bank of Hagerstown Maryland, for the purpose and design of erecting in its stead such six story office building.

2. That it may be declared and decreed by this Honorable Court that the said Bank has not by-law, the right to destroy or modify, change or improve the said Bank building more

than shall be necessary for its immediate accommodation in the transaction of its business.

3. And that your orators may have such other and further relief as to the Court may seem fit.

May it please your Honor to grant unto your orator, not (8) only a writ of injunction issuing out of and under the seal of this Honorable Court, to be directed to the said, the First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffney, Walter D. Wilson, Harvey H. Heyser, and S. Lewis Lamkin, to restrain them or either of them, their servants and agents from erecting on the site of the present bank building or on any other lot belonging to or which may be acquired by said bank, a six story office building designed for other uses than are necessary for the Bank's immediate accommodation in the transaction of its business and from tearing down or demolishing or destroying the present bank building of said Bank for the purpose of erecting in its stead such six story office building, but also the writ of subpoena to be directed to the said, the First National Bank of Hagerstown, Maryland Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Litle, Francis H. Miller, Charles McCauley, Wolgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, Harvey H. Heyser, and S. Lewis Lamkin thereby commanding them and each of them at a certain day and under a certain pain, to be therein limited, personally to be and appear before this Honorable Court and then and there full true, direct and perfect answer make to all and singular, the premises and further to stand to perform and abide by such further order, direction and decree therein as to your Honors shall seem meet, etc.

LEWIS P. WINGERT.

H. F. WINGERT,
MILLER WINGERT,
RICH. H. BAYARD,
Solicitors for Pltff.

Lewis P. Wingert being duly sworn doth depose and say, That he is the complainant in the aforegoing bill and that the facts therein stated are true to the best of his knowledge and belief. That the First National Bank of Hagerstown, Maryland, was duly incorporated and is now an existing Corpora-

tion as in said Bill set forth and that Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. (9) Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson are the directors of said Bank and that Harvey H. Heyser is the cashier thereof. That he is the owner of one hundred and fifty-one shares of the capital stock of said Company. That he is informed and believes that an undertaking is to be begun and carried on to completion by the officers and directors of said Bank of the character specially stated in said bill. That the officers and directors have decided to tear down and demolish and destroy the said Bank building with the intention and design of erecting a six story office building in its stead and have employed a contractor and builder, one S. Lewis Lamkin, to aid and assist in said work and to erect on the site of the present bank building a six story office building and bank-vault and accessories, and that the cost and expense of erecting said office building and bank-vault and accessories will exceed the sum of sixty thousand dollars, ($60,000.00). That he was a shareholder in said bank at the time of the transaction of which he complains in his aforegoing Bill of Complaint, and still is such shareholder. And that this suit is not a collusive one to confer on this Court jurisdiction of this case of which this Court would not otherwise have cognizance.

He is further informed and believes that such undertaking will be begun and pursued at an early date by the officers and directors of said Bank unless they be restrained from so doing by the injunction of this Court and that he is advised and believes such undertaking is without authority of law and in violation thereof and of the charter of said Bank.

LEWIS P. WINGART.

Sworn and subscribed this 10th day of March, 1909, before me a Notary Public of the State of Maryland, residing in the City of Baltimore.

GUSTAVE W. RIDGELY,

[Notarial Seal.]

**EXHIBIT "A."**

(10) Filed with Bill of Complaint.

**Exhibit "A."**

Act approved June 3rd, 1864, section 5137.
Act approved June 3rd, 1864, section 5136.
Act approved March 3rd, 1887, section 4.
Act approved June 3rd, 1864, section 5242.

**EXHIBIT "C."**

(11) Filed with Bill of Complaint.

Hagerstown, Md., March 9, 1909.

To the President and Board of Directors of the First National Bank of Hagerstown, Maryland.

Gentlemen:

I am informed that your Board of Directors contemplate tearing down the present bank building now standing on our lot on Washington street, for the purpose of erecting in its stead on said lot a large and expensive modern office building, the estimated cost of which when constructed will amount to approximately sixty thousand dollars. I am informed that it is your purpose to utilize the first floor of such new office building when erected for the location and transaction of the business of the bank, but that the remaining five stories are designed to produce offices and suites of rooms to be leased by the bank to the general public applying for the same as tenants.

I am advised that the building of such office building by our bank and the holding of the same for such purposes is outside and beyond the powers conferred upon a National Bank and that the prosecution of such contemplated plan might result in the forfeiture of our Bank's Charter. I also respectfully submit the opinion that the withdrawal of so large a sum as $60,000 from the funds of the bank for the purpose of such investment in real estate is not consonant with sound banking. I therefore earnestly protest by means of this letter against the Board of Directors and the officers of the Bank carrying forward the said plans which I understand are contemplated as above, and respectfully demand as a stockholder in the Bank that the Directors and officers shall refrain from proceeding with such illegal enterprise. I am,

Yours very truly,

LEWIS P. WINGERT.

## MOTION FOR PRELIMINARY INJUNCTION AND ORDER OF COURT THEREON.

(12) Filed March 10, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al.

To the Honorable the Judges of the said Court:

The plaintiff in this cause, by Henry F. Wingert, Miller Wingert and Richard H. Bayard, his solicitors, moves the court to grant a preliminary injunction against the said defendants restraining them from erecting on the site of the present bank building of the First National Bank of Hagerstown, Maryland, or on any other lot belonging to said Bank, a six story office building as set forth in the bill filed in this cause.

LEWIS P. WINGERT.

H. F, WINGERT,
MILLER WINGERT,
R. H. BAYARD,
Solicitors for Pltff.

Upon the application of the plaintiff in the above entitled cause it is on the 10th day of March, 1909, ordered by the Circuit Court of the United States in and for the District of Maryland that the motion of complainant for a preliminary injunction be set for hearing on the 31st day of March, 1909.

And it is further ordered by the court that until the hearing of said motion and until the further order of this court, upon (13) the filing of a bond by the plaintiff in the penalty of one thousand dollars with security to be approved by the court, the defendants The First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles M. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, Harvey H. Heyser and S. Lewis Lamkin, and each of them, their agents and servants be and they are hereby restrained and enjoined from tearing

down or demolishing the Bank building of the First National Bank of Hagerstown, Maryland, now erected on its lot on West Washington street in the town of Hagerstown, Maryland, with the purpose and design of erecting in its stead, a modern office building. And it is further ordered that the defendants aforesaid show cause if any they have on or before the 27th day of March, 1909, why a preliminary injunction should not be granted as prayed in said bill of complaint, provided a copy of said bill of complaint and of this order be served on the First National Bank of Hagerstown, Maryland, on or before the 15th day of March, 1909, and provided further that a copy of this order be served on each of the defendants named in said bill on or before said 15th day of March, 1909, complainants to have until the 20th day of March, 1909, to file affidavits in support of its said application for a preliminary injunction and the defendants to have until the 27th day of March, 1909, to file affidavits in their behalf and the complainant to have until the 31st day of March, 1909, to file affidavits in rebuttal if such shall be deemed necessary.

THOS. J. MORRIS, Judge.

**MARSHAL'S RETURN ATTACHED TO ABOVE.**

(14)

"Summoned the First National Bank of Hagerstown, Maryland, by service on Harvey H. Heyser, its cashier, and copy of subpœna in equity, bill of complaint, and restraining order left with him at Hagerstown, Maryland, March 13, 1909.

Summoned Harvey H. Heyser, Christian M. Horst, S. Lewis Lamkin, Wolgang M. Newcomer, John D. Newcomer, Walter D. Wilson, J. Grason Steffey, Charles McCauley, Francis H. Miller, and Charles A. Little, and copy subpœna in equity and restraining order left with each of them at Hagerstown, Maryland, March 13, 1909.

Summoned William Wingert and Frank W. Mish, and copy subpœna in equity, and restraining order left with each of them at Hagerstown, Maryland, March 15, 1909.

Summoned Isaac Ankeney, and copy subpœna in equity and restraining order left with him at Clear Spring, Maryland, March 15, 1909.

JOHN F. LANGHAMMER, Marshal."

## BOND PURSUANT TO RESTRAINING ORDER.

(15) Filed March 10, 1909.

FIDELITY AND DEPOSIT COMPANY

of Maryland.

Home Office: Baltimore, Maryland.

Know all men by these presents, that we, Lewis P. Wingert, of Washington County, and State of Maryland, principal, and the Fidelity and Deposit Company of Maryland, surety, are held and firmly bound unto the First National Bank, of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles M. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, Harvey H. Heyser and S. Lewis Lamkin, all of said County of Washington, and State of Maryland, in the full sum of one thousand ($1,000) dollars to the payment of which sum, well and truly to be made, he, the said principals, binds himself, his heirs, and personal representatives, and the said Fidelity & Deposit Company of Maryland binds itself, its successors and assigns, jointly and severally, by these presents. Sealed with their seals and dated this 10th day of March, in the year nineteen hundred and nine, 1909.

Whereas, by an order of the Circuit Court of the United States for the District of Maryland in a cause therein pending wherein the above bounden Lewis P. Wingert is complainant and the said obligees are defendants, a restraining order is about to issue to restrain the said defendants from tearing down and demolishing the Bank Building of said First National Bank, of Hagerstown, Maryland, now erected on its lot on (16) West Washington street, in the Town of Hagerstown, Maryland, with the purpose and design of erecting in its stead, a modern office building, until the hearing of a motion made by the complainant in said case for a preliminary injunction be had, and until the further order of said court upon the complainant's filing a bond with securities in the above mentioned penalty.

Now, the condition of this obligation is such, that if the said complainant saves harmless the said defendants from all damages and costs occasioned by the issuing of said restraining order, and shall in all things obey, abide by, and perform, and fulfill such decree and order as shall be made in the premises, then this obligation shall be void and of no effect, otherwise to be and remain in full force and virtue in law.

In witness whereof, we hereunto subscribe our names and affix our seals this 10th day of March, nineteen hundred and nine, 1909.

LEWIS P. WINGERT, [Seal]
FIDELITY & DEPOSIT COMPANY OF MARYLAND,
By EDWIN WARFIELD, Vice-President.

Attest:

EDGAR S. DOBSON,
Ass't Secretary.
[Corporate Seal]

Witness:

EDWARD D. MARTIN.

**SUBPOENA.**

(17) Issued March 10, 1909.

THE UNITED STATES OF AMERICA, }
District of Maryland, } to-wit:

To The First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, Harvey H. Heyser and S. Lewis Lamkin—Greeting:

[Seal] You are hereby commanded that all excuses and delays set aside you be and appear at the Clerk's office of the Circuit Court of the United States for the Fourth Circuit in and for the District of Maryland on the first Monday in April next, to answer unto the bill of complaint of Lewis P. Wingert in said court exhibited against you. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States the 10th day of March, in the year of our Lord, 1909.

Issued 10th day of March, 1909.

ARTHUR L. SPAMER, Clerk.

MEMORANDUM.—The defendants are required to enter their appearance in the suit in the Clerk's Office on or before the first Monday of April next; otherwise the bill may be taken *pro confesso.*

## MARSHAL'S RETURN ATTACHED TO ABOVE

(18) "Summoned the First National Bank of Hagerstown, Maryland, by service on Harvey H. Heyser, its cashier, and copy of subpœna in equity, bill of complaint, and restraining order left with him at Hagerstown, Maryland, March 13, 1909.

Summoned Harvey H. Heyser, Christian M. Horst, S. Lewis Lamkin, Wolgang M. Newcomer, John D. Newcomer, Walter D. Wilson, J. Grason Steffey, Charles McCauley, Francis H. Miller, and Charles A. Little, and copy subpœna in equity and restraining order left with each of them at Hagerstown, Maryland, March 13, 1909.

Summoned William Wingert and Frank W. Mish, and copy subpœna in equity, and restraining order left with each of them at Hagerstown, Maryland, March 15, 1909.

Summoned Isaac Ankeney, and copy subpœna in equity and restraining order left with him at Clear Spring, Maryland, March 15, 1909.

JOHN F. LANGHAMMER, U. S. Marshal."

## AFFIDAVIT OF LEWIS P. WINGERT ON BEHALF OF COMPLAINANT.

(19) Filed March 20th, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT, IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al.

Lewis P. Wingert having been duly sworn, deposes and says that he is a resident of Washington County, Maryland.

That the First National Bank of Hagerstown, Maryland, is a corporation doing business in Hagerstown, in Washington County and State of Maryland, and that Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles McCauley, Francis H. Miller, Charles A. Little, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey and Walter D. Willson are the duly elected and qualified directors of the said First National Bank of Hagerstown, Maryland. Frank W. Mish, the president, and Harvey H. Heyser, the cashier thereof.

That he owns one hundred and fifty-one shares of the capital stock of said First National Bank, and that the business and affairs of said bank are in an eminently prosperous condition.

That said First National Bank of Hagerstown, Maryland, is seized and possessed of a certain piece or parcel of ground with improvements thereon, situated and lying on the North side of West Washington street, in Hagerstown, in Washington County and State aforesaid, said lot has a frontage of forty-one feet more or less on said West Washington street, and extends (20) Northward therefrom with uniform width a distance of two hundred and forty feet to a Public Alley and is bounded on the West Side by a Public Alley Ten feet wide and on the East side by a private residence, and is the Eastern Half of lot designated as lot number Eighty (80) on a plot of lots of said town of Hagerstown, made by S. S. Downin, Surveyor.

That the lot or parcel of ground aforesaid is improved by a three story brick building, which said building covers the entire frontage of said lot on the North Side of said West Washington street, and extends Northward from West Washington street, aforesaid along the Public Alley aforementioned, a distance of forty feet, also with bank vault and basement, all equipped with modern conveniences.

That said bank building is constructed of good material, is well built substantial and strong, and in good condition, and repair, and that the remainder of said lot is unimproved except for a few small structures which are inconsequential, and of little value.

That the first floor of said building is occupied in part by the said First National Bank for a banking room, directors room and accessories, in part together with the second and third floors it is leased by the Bank to a tenant thereof. And that said bank is now and for many years past has been doing a banking business therein.

That this deponent has been advised that the directors of said First National Bank has decided to tear down, destroy, and demolish the bank building above described, and to erect in its stead a six story office building, the first story to be used for a banking room, directors room and accessories, and that a certain S. Lewis Lamkin has been selected to superintend the (21) work of tearing down the present building and of erecting the six story office building aforesaid and that steps taken, to rent temporary quarters for the bank during the contemplated improvement, were ratified by the directors at a regular meeting thereof.

That your deponent is advised that the expense and outlay of the authorized work and improvements of said six story office building will exceed the sum of sixty thousand dollars

and that such sum will be paid out of the cash funds of said First National Bank.

That this deponent has caused to be made, diligent search of the land records of Washington County, Maryland, and that such search has failed to disclose a title of record for the lot or ground aforesaid of said First National Bank.

That he has an undivided interest in extensive and valuable real property both business and residential and in manufacturing enterprises, and banking institutions in Hagerstown, Maryland.

That said business properties are located in the center of the business section of said town, and that he believes that the contemplated action of the directors of said First National Bank in tearing down their present bank building and in erecting a six story office building in its stead is unbusiness like and unwise.

LEWIS P. WINGERT.

Sworn and subscribed this nineteenth day of March, 1909, before me, a Notary Public of the State of Maryland, in and for Washington County.

[Notarial Seal] A. YINGLING,
Notary Public.
My Commission Expires 2 day of May, 1910.

## AFFIDAVIT OF WILLIAM WINGERT ON BEHALF OF COMPLAINANT.

(22) Filed March 20th, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT, IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al.

William Wingert being duly sworn, deposes and says, that he is a resident of Hagerstown in Washington County, Maryland.

That the First National Bank of Hagerstown, Maryland, is a corporation doing business in Hagerstown, in Washington County, and State of Maryland, and that Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles McCauley, Francis H. Miller, Charles A. Little, Wolfgang M. Newcomer, John D. Newcomer, J. Grason Steffey, Walter D. Wilson and him-

self are the duly elected and qualified directors of the said First National Bank of Hagerstown, Maryland. Frank W. Mish is the president and Harvey H. Heyser the cashier thereof.

That he owns three hundred and fifty-six shares of the capital stock of said First National Bank and that his shares of stock and those of his mother, sisters and brothers amount to twelve hundred shares, and that the business and affairs of said First National Bank are in an eminently prosperous condition.

That said First National Bank of Hagerstown is doing business in its own bank building on the North Side of West Washington street, in Hagerstown, Maryland, and that said bank building is constructed of good material, is well built, substantial and strong and in good condition and repair.

That the first floor of said building is occupied in part by the said First National Bank for a banking room, directors room and accessories, in part together with the second and third (23) floors it is leased by the bank to a tenant thereof.

That the directors of said bank have decided to tear down and demolish the bank building above described, and to erect in its stead a six story office building and that a certain S. Lewis Lamkin has been selected to superintend the execution of the contemplated work and plans of said bank.

That the expenditure and outlay of sixty thousand dollars for the contemplated work and plans taken from the cash funds of said bank is unbusinesslike and unwise and that this deponent has steadily opposed the contemplated changes at the meetings of the directors of said bank and that he has *caused* his opposition to be noted on the records of said bank.

That this deponent has an undivided interest in extensive and valuable real property both business and residential and in manufacturing enterprises, and banking institutions in Hagerstown, Maryland.

That said business properties are located in the center of the business section of said town, and that he believes that the contemplated action of the directors of said First National Bank in tearing down their present bank building and in erecting a six story office building in its stead is unbusinesslike and unwise.

WILLIAM WINGERT.

Sworn and subscribed this nineteenth day of March, 1909, before me, a Notary Public of the State of Maryland, in and for Washington County.

[Notarial Seal] A. YINGLING,
Notary Public.

## AFFIDAVIT OF JOSEPH MURDOCK ON BEHALF OF COMPLAINANT.

(24) Filed March 20th, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT, IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al.

Joseph Murdock being duly sworn, deposes and says that he is a resident of Hagerstown, in Washington County, Maryland, that now and for the past thirteen years he has been actively engaged in the real estate business and in auctioneering in said Hagerstown, that he knows the property of the First National Bank of Hagerstown, Maryland, situate on the North Side of West Washington street in said town, that the lot of ground thereto has a frontage of forty feet more or less on said West Washington street and extends Northward therefrom a distance of two hundred and forty feet, more or less, to a public alley, and adjoins on the West side a Public Alley and on the East side a two story private residence, that *siad* lot is improved by a three story brick bank building, which covers the entire frontage of said lot, and extends Northward along the said Public Alley about sixty feet, more or less, that said bank building is constructed of good material, is well built, substantial and strong and in good condition and repair.

That the first floor of said bank building is used by said bank principally for a banking room and directors room.
(25) That the remainder of said lot of ground is unimproved except for a very small portion thereof.

That there are no six story buildings in the town of Hagerstown. That there is only *on* five story building in said town and it is occupied by the owner solely for a department store.

That there are less than a dozen four story buildings in Hagerstown aforesaid and most of the business properties in the heart of the business section are three stories in height and many business properties are only two stories.

That the population of said town is conservatively estimated at seventeen thousand persons, that the business and affairs of the said First National Bank of Hagerstown, Maryland, are highly prosperous and its shares of capital stock sell readily above par.

That he is credibly informed that said First National Bank contemplates tearing down its present bank building located on said West Washington street, at an early date, and erecting in the stead a six story office building and that steps have already been taken looking to the commencement of the work and that it is commonly reported that the expense of the contemplated change will amount to sixty thousand dollars and that the undertaking is unbusinesslike and unwise.

JOSEPH MURDOCK.

Sworn and subscribed this nineteenth day of March, 1909, before me, a Notary Public of the State of Maryland, in and for Washington County.

[Notarial Seal]

A. YINGLING,
N. P.
Notary Public.

## ORDER OF APPEARANCE.

(26) Filed March 27, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT, IN AND FOR THE DISTRICT OF MARYLAND.

| | |
|---|---|
| Lewis P. Wingert<br>*vs.*<br>First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, Harvey H. Heyser, S. Lewis Lamkin. | In Equity. |

Mr. Spamer, Clerk:

Please enter our appearance for all of the defendants in the above entitled case.

C. A. LITTLE,
GEORGE R. GAITHER,
Attorneys for Defendants.

## ANSWER OF FIRST NATIONAL BANK OF HAGERSTOWN, MD.

(27) Filed March 27, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT, IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles M. Littel, Francis H. Miller, Charles McCauley, Wolgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Willson, Harvey H. Heyser, and S. Lewis Lamkin.

To the Honorable, the Judges of Said Court:

The Answer of the First National Bank of Hagerstown, Maryland, one of the defendants in the above entitled cause, to the Bill of Complaint in said cause exhibited against it, respectfully represents unto Your Honorable Court,

FIRST.

That it admits the allegations of the 1st, 2nd, 3rd and 4th paragraphs of said Bill of Complaint.

SECOND.

(28)

That it admits all the allegations of the fifth paragraph of said Bill of Complaint, except the allegations therein contained that the said Banking Building therein mentioned is "all equipped with modern conveniences and is in good repair," which said last named allegation it denies. And further answering said fifth paragraph of said Bill of Complaint, this respondent says that the Banking Building on said lot of ground has been in use for a period of about thirty years; that during this time very little money has been spent thereon in the way of improvements and repairs, that said Banking Building and Banking Room therein are in bad repair, and has but few of the modern conveniences necessary for the proper equipment of a modern, up-to-date Banking House; that said

Banking House is in such condition and repair that, regardless of the question of the contemplated improvements, it is necessary at this time to spend a considerable sum of money thereon to put the same in proper repair, and to make it suitable and convenient for properly conducting the business of the Bank therein.

THIRD.

This respondent in answer to the sixth paragraph of said Bill of Complaint, admits that it is contemplated to tear down the Banking Building now on said lot of ground, and to erect in it's stead a modern six story building, the first floor of which is to be used for banking purposes, and the other floors of which are to be divided into offices to be rented by the Bank to Tenants, at an outlay of from fifty to sixty thousand dollars. This respondent also admits the receipt of the letter of protest, filed with the Bill of Complaint as Exhibit C, and more specificially referred to in said sixth paragraph of said Bill of Complaint, but it denies that such contemplated action is ultra vires the Bank, and further denies that the diversion (29) of such sum of money as may be necessary to make the contemplated improvements is not consonant with proper banking principles, and further denies that said contemplated improvements ought to be abandoned.

FOURTH.

In further answer to said sixth paragraph of said Bill of Complaint this respondent alleges that the Town of Hagerstown is a thriving business and manufacturing town, with a population of about eighteen thousand people; that the said Banking House is located in the very center of the business part of the town, adjacent to the Hotel Hamilton, the largest Hotel of the Town, next door to the People's National Bank, opposite the Banking House of Eavey, Lane & Company, and The Maryland Surety and Trust Company, only a short distance from the City Savings Bank and the Mechanic's Loan and Savings Institute, nearly opposite the Washington County Court House, and at a location peculiarly adapted to an office building such as is contemplated, a plat of that part of Hagerstown in which said Banking Building is located being filed herewith, and asked to be taken as part hereof, and marked Exhibit Plat; that an office building, such as is contemplated will prove an investment of the funds of the Bank that will yield the largest income, lessen its own rent, and render that part of its funds which are invested in realty most productive; that said Bank now has a surplus of one hundred thousand dol-

lars, and over thirty thousand dollars of undivided profits; that the valuation of the realty owned by the Bank, is now, and has for years past been, carried in the statements of the Bank and in the reports of the funds and assets thereof at ten thousand dollars; that the value of the lot of ground of the (30) Bank, exclusive of the building, is worth at this time from thirty-five to forty thousand dollars, that it is proposed to pay the cost of the erection of said contemplated building, out of the undivided profits of the Bank, without in any way, diminishing the surplus of the Bank, and that the increased value of the real estate will represent when said contemplated building is completed, at a very conservative valuation, the undivided profits and investment of the funds and surplus of the Bank.

FIFTH.

In answer to the seventh paragraph of said Bill of Complaint, this respondent admits all the allegations thereof except that it denies the allegation therein contained, that said contemplated action by the Bank (meaning the tearing down of the old building and the erection of a new six story building) is illegal.

SIXTH.

This respondent denies all the allegations of the eight and ninth paragraphs of said Bill of Complaint.

SEVENTH.

This respondent denies the allegations of the tenth paragraph of said Bill of Complant, and says that although it was not necessary to bring the matter of the contemplated improvements before the stockholders of said Bank, and alleging that the management of the affairs of the Bank are always in the hands of it's Board of Directors, nevertheless, acting in a prudent and cautious manner with reference to the contemplated improvements, the proposed plan of improvements was submitted to the individual stockholders of the Bank, and more than 75% of said stockholders have consented to and approved of the action of the Board of Directors in the matter, said consents being made in writing, and being now in the possession of the officers of this respondent.

EIGHTH.

(31)

This respondent in answer to the eleventh paragraph of said Bill of Complaint, admits that the Complainant was the

owner of 151 shares of the stock of said Bank at the time of the special meeting therein referred to, but denies that the erection of such building as is contemplated is illegal, The other allegations of said eleventh paragraph not being within the knowledge of this respondent, it can neither admit nor deny the same.

NINTH.

This respondent neither admits nor denies the allegations of the twelfth paragraph of said Bill of Complaint.

This respondent further answering said Bill of Complaint, denies the Complainant's right to the injunction and other relief prayed for in his Bill of Complaint, and submits that said Bill of Complaint ought to be dismissed with costs to this defendant.

THE FIRST NATIONAL BANK
OF HAGERSTOWN, MARYLAND.
by F. W. MISH, President.

C. A. LITTLE,
GEORGE R. GAITHER.
Solicitors for Respondent.

Frank W. Mish, being duly sworn doth depose and say, that he is the President of the First National Bank of Hagerstown, Maryland, one of the defendants in the above entitled cause, that all the facts, matters and things set forth in the aforegoing answer which are to be taken as a part hereof as fully and to the same effect as if they were herein repeated and set forth at length, are true to the best of his knowledge and belief; that said Bank building now occupied by the said First National Bank of Hagerstown, Maryland, is not in good repair, that he has been connected with said Bank for years, that very (32) little money has been spent on said Bank Building in the way of repairs for many years, that repairs therein and thereto are necessary at this time, that Hagerstown has a population of about 18,000 inhabitants, that said Banking Building is located in the very center of the business part of Hagerstown, that the location is peculiarly adapted to an office building, such as is contemplated, that the investment of the funds of the Bank in this way will yield the largest income, lessen the rent of the Bank, and render that part of the Bank funds invested in Realty most productive; that said Bank now has a surplus of one hundred thousand dollars, and over thirty thousand dollars undivided profits; that the real estate of said Bank is now carried at a valuation of ten thousand dollars; that the value of the lot of ground alone is from thirty-five

to forty thousand dollars, and that said contemplated building can be erected without diminishing the surplus of said Bank, and that the stockholders owning seventy-five per cent. of the stock of the said Bank, have approved of the erection of the contemplated building, and have endorsed the action of the Bank in the matter, and that he has been duly authorized to sign the above answer and to make this deposition.

FRANK W. MISH,
President.

Sworn and subscribed this 27th day of March, A. D., 1909, before me, a Notary Public of the State of Maryland, residing in Baltimore City, Maryland.

WM. H. H. RALEIGH,
[Notary's Seal.] Notary Public.

**JOINT AND SEVERAL ANSWER OF FRANK W. MISH, ISAAC ANKENEY, CHRISTIAN M. HORST, CHARLES A. LITTLE, FRANCIS H. MILLER, CHARLES McCAULEY, WOLFGANG M. NEWCOMER, JOHN D. NEWCOMER, J. GRASON STEFFEY, WALTER D. WILSON, AND HARVEY H. HEYSER.**

Filed March 27, 1909.

(34)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT, IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles M. Littel, Francis H. Miller, Charles McCauley, Wolgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Willson, Harvey H. Heyser, and S. Lewis Lamkin.

To the Honorable, the Judges of Said Court:

The joint and several answers of Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, whose name name is incorrectly given as Charles M. Little in the Bill of

(35) Complaint, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, whose name is incorrectly given as Wolgang M. Newcomer in the Bill of Complaint, John D. Newcomer, J. Grason Steffey, Walter D. Willson, all of the Directors of the First National Bank of Hagerstown, Maryland, except William Wingert, Harvey H. Heyser, Cashier of said Bank, Defendants named in the above entitled cause, respectfully represents unto Your Honorable Court,

FIRST.

That they and each of them hereby admit all the allegations of the 1st, 2nd, 3rd and 4th paragraphs of said Bill of Complaint.

SECOND.

These respondents and each of them, in answer to the fifth paragraph of said Bill of Complaint, say that they admit all the allegations contained therein, except the assertion that the said Banking Building therein mentioned is "all equipped with modern conveniences and is in good repair," which said last named allegations, these respondents and each of them deny; and further answering said fifth paragraph of said Bill of Complaint, these respondents and each of them say that the Banking Building on said lot of ground has been in use for a period of about thirty years. That during all these years very little money has been spent thereon in the way of improvements and repairs. That said Banking Building is now in bad repair and has but few of the modern conveniences necessary for the proper equipment of a modern and up-to-date banking house. That said Banking House is antiquated and in such repair and condition that regardless of the question of the contemplated improvements, it is necessary at this time to spend a large sum of money thereon to properly equip, improve and repair the same, so as to make it an up-to-date, modern Bank Building and Banking House, suitable and convenient for the purpose of conducting the business of the said Bank.

THIRD.

(36)

Answering the sixth paragraph of said Bill of Complaint, these respondents and each of them say that they admit that they contemplate tearing down the aforesaid Banking Building, now standing on the aforesaid lot, and erecting in its stead a modern six-story building the first floor of which is to be used for banking purposes, the other floors to be divided into offices

to be rented to tenants, at an outlay of from fifty to sixty thousand dollars; and they also admit the receipt of the letter of protest marked Exhibit "C," and more specifically referred to in the sixth paragraph of said Bill of Complaint, and allege that at the said meeting of the Board of Directors of said Bank, held as alleged in said sixth paragraph, the said letter of protest was read to the Board, that no motion was made with reference thereto by any member of the Board, and deny that said contemplated action is ultra vires the Bank, and deny that the diversion of such money as will be necessary to make the contemplated improvements is not consonant with proper banking principles, and allege that said contemplated improvements ought not to be abandoned.

FOURTH.

Further answering said sixth paragraph of said Bill of Complaint, these respondents and each of them, allege that the Town of Hagerstown is a thriving business town and railroad center, with a population of about eightee thousand people, that said Banking House is located in the very center of the business portion of the Town, near the County Court House, close to the leading hotels, other Banks and leading business places of the Town, and at a place particularly adapted to an office building, such as is contemplated, that the erection of such an office building will prove a most profitable and productive investment of the funds of the Bank, that there is a demand in Hagerstown for an office building, such as is contemplated, and a number of persons have already applied for offices in said (37) building and made inquiry about the same; that said Bank has a surplus of one hundred thousand dollars, and about thirty-two thousand dollars undivided earnings, that the said Bank is in a most flourishing condition, its total assets at times amounting to nearly a million dollars. That the investment of the funds of the Bank in the manner contemplated, will be one that will yield the largest income, lessen the rent and enable the Bank to provide it's own Banking House at little or no cost to the Stockholders thereof, and make that portion of the Bank's funds invested in Real Estate most productive, that the real estate of the Bank is now being carried at a valuation of only ten thousand dollars, whereas, the lot of ground alone, without the improvements thereon is worth from thirty-five to forty thousand dollars; that the expenditure of the money proposed will not, in any way, diminish the surplus of the Bank, and that the increased value of the Banking House and Property will, at a very conservative estimate, more than balance the expenditure necessary to make such im-

provement, and make one of the safest and most productive investments of said funds so expended.

FIFTH.

In answer to the seventh paragraph of said Bill of Complaint, these respondents and each of them say, that they admit all the allegations thereof, except that it denies the allegation therein contained to the effect that the action contemplated by these defendants is illegal, and they and each of them allege that at the meeting mentioned in said seventh paragraph of said Bill of Complaint, all of the respondents herein named, except Harvey H. Heyser, the Cashier of said Bank, and also William Wingert, one of the Directors of said Bank and one of the defendants in this cause, were present, and that all of the said Directors voted in favor of sair contemplated improvements, except the said Director, William Wingert, a brother of the Complainant, who opposed the said contemplated improvements.

SIXTH.

(38)

These respondents and each of them deny the allegations of the eighth and ninth paragraphs of said Bill of Complaint.

SEVENTH.

These respondents and each of them in answer to the tenth paragraph of said Bill of Complaint, say that although it was not necessary to consult the stockholders of the Bank with reference to the said contemplated improvements, hereby alleging that the management of all the affairs and business of the Bank, including the erection of a building such as is contemplated herein, is always in the hands of the Directors of said Bank, yet, acting in a careful and cautious manner in the matter, these respondents caused the proposition as to the contemplated improvements to be submitted to the individual Stockholders of the Bank, and about seventy-five per cent., of the stockholders have approved of the scheme, and endorsed the action of your respondents, Directors, in the premises.

EIGHTH.

There respondents and each of them admit that the Complainant was the owner of 151 shares of the stock of the Bank at the time alleged in the eleventh paragraph of said Bill of

Complaint, but they have no knowledge of the other matters and things alleged in said eleventh paragraph, and can neither admit or deny the same.

NINTH.

These respondents and each of them can neither admit nor deny the allegations of the twelfth paragraph of said Bill of Complaint.

These respondents and each of them hereby deny the right of the said Complainant in the injunction and other relief prayed for in his Bill of Complaint, and submit that said Bill of Complaint ought to be dismissed with reasonable costs to these respondents.

And as in duty, etc.

FRANK W. MISH,
ISAAC ANKENEY, JR.,
CHRISTIAN M. HORST,
CHARLES A. LITTLE,
(39) FRANCIS H. MILLER,
CHARLES McCAULEY,
WOLFGANG M. NEWCOMER,
JOHN D. NEWCOMER,
J. GRASON STEFFEY,
WALTER D. WILLSON,
HARVEY H. HEYSER.

C. A. LITTLE,
GEORGE R. GAITHER,
Solicitors for Respondents.

Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, J. Grason Steffney, Walter D. Willson, each being duly sworn did each depose and say, that they and each of them are Directors of the First National Bank of Hagerstown, Maryland, that they are all the Directors thereof, except William Wingert; and Harvey H. Heyser being duly sworn did depose and say that he is the

Cashier of the First National Bank of Hagerstown, Maryland, and each and all after being duly sworn did depose and say that all the facts, matters and things set forth and stated in the aforegoing answer, and to be taken as a part hereof as fully and to the same effect, as if herein fully and at length repeated and set forth, are true to the best of their and each of their knowledge and belief, that said Banking Building is not all equipped with modern conveniences and is not in good repair, that said Banking House has been in use for many years, that very little money has been spent thereon for improvements and repairs, that it is antiquated, in bad repair, and has but few of the modern conveniences necessary for the proper equipment of a modern up-to-date Banking House, that it is necessary at this time to spend a considerable sum of money to properly equip, improve and repair said Banking House, so as to make it suitable and convenient for the purpose of conducting the business of said Bank, that said Banking House is located in (40) the center of the business portion of Hagerstown, near the County Court House, near other Banks and near the leading business places of the Town, and that it's location is one especially adapted to an office building, such as is contemplated; that in the opinion of these respondent the erection of such a building as is contemplated will prove a most profitable and productive investment of the funds of the Bank, that there is a demand for an office building such as is contemplated, that said Bank has a surplus of one hundred thousand dollars and about thirty two thousand undivided profits and earnings, that said Bank is in a flourishing condition and that it's total assets at times amount to nearly a million dollars. That the investment of the funds of the Bank in the manner contemplated will, in our and each of our opinion, yield the largest income, lessen the rent of the Bank, and enable the Bank to provide its own Banking House at little or no expense to its Stockholders, and make that portion of the Bank's funds invested in Real Estate most productive, that the Realty of the Bank is now carried at a valuation of only ten thousand dollars, and that the lot of ground owned by the Bank alone is worth from thirty-five to forty thousand dollars, that the contemplated improvements will not diminish the Bank's surplus, that the increase in the value of the Real Estate when the contemplated improvements are completed will at a most conservative valuation, balance the expenditure from the surplus and undivided profits, and make one of the safest and most productive investments of the Bank; that all of the members of the Board of Directors are in favor of the contemplated improvements except William Wingert, who disapproves the same. That about

75% of the Stockholders approve of the plan of improvements and endorse the action of the Directors in the matter.

FRANK W. MISH,
ISAAC ANKENEY, JR.,
CHRISTIAN M. HORST,
(41) CHARLES A. LITTLE,
FRANCIS H. MILLER,
CHARLES McCAULEY,
WOLFGANG M. NEWCOMER,
JOHN D. NEWCOMER,
J. GRASON STEFFEY,
WALTER D. WILLSON,
HARVEY H. HEYSER.

Sworn and subscribed by each of the above named deponents this twenty-sixth day of March, A. D., 1909, before me, a Notary Public of the State of Maryland, residing in Hagerstown, Washington County, Maryland.

JOHN D. TURNER,
[Notary's Seal.] Notary Public.

## ANSWER OF S. LEWIS LAMKIN.

(42) Filed March 27, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT, IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles M. Littel, Francis H. Miller, Charles McCauley, Wolgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Willson, Harvey H. Heyser, and S. Lewis Lamkin.

To the Honorable, the Judges of Said Court:

The Answer of S. Lewis Lamkin to the Bill of Complaint filed against him in the above entitled cause, respectfully represents unto Your Honorable Court,

FIRST.

That he knows nothing about the matters and things alleged and set forth in the 1st, 2nd, 3rd, 4th, 6th, 8th, 9th, 10th, 11th and 12th paragraphs of said Bill of Complaint, and can neither admit nor deny the same, but puts the Complainant upon his proof thereof.

SECOND.

(43)

That he admits all the allegations of the 5th paragraph of said Bill of Complaint, except as to the allegation that said Banking Building is "all equipped with modern conveniences and in good repair" and says that as to the equipment with modern conveniences, he has no knowledge, as he is not qualified to say what conveniences are necessary for a properly equipped Banking House, and he can therefore neither admit nor deny the said allegation, but puts the Complainant upon his proof thereof; he denies that said Banking House is in good repair, and alleges that a considerable sum of money will have to be spent on the said building at this time to put the same in first class condition and repair.

THIRD.

This respondent can neither admit nor deny the allegations contained in the seventh paragraph of said Bill of Complaint, and puts the Complainant to his proof thereof, except that he admits that the Directors of said Bank contemplate tearing down their present Banking Building and erecting a new six story building in it's place, and he further admits that the Board of Directors of said Bank have employed him to superintend the construction of said Building, subject to a written contract which was to be entered into therefor.

FOURTH.

Further answering said Bill of Complaint, this respondent says that the building now occupied by the said, The First National Bank of Hagerstown, Maryland, is an antiquated building, and has been in use for many years; that it is located in the center of the business part of Hagerstown, and that the erection of a building such as is contemplated by the said Bank, would be wise and businesslike proceeding on the part of the Bank; that the location of said Banking Building is one most admirably adapted to an office building and would, in his opin-

ion, prove a most profitable investment for the funds of the Bank.

This respondent therefore prays Your Honorable Court (44) that the said Bill of Complaint may be dismissed as to him with his reasonable costs.

And as in duty, etc.

S. LEWIS LAMKIN.

C. A. LITTLE,
GEORGE R. GAITHER,
Solicitors for Respondent.

S. Lewis Lamkin, being duly sworn doth depose and say that he is one of the Defendants in the above entitled cause, being the S. Lewis Lamkin in the Bill of Complaint named; that all the matters and things alleged in his aforegoing answer, and to be taken as a part hereof to the same effect as if the same were herein repeated and set forth, are true and correct as in said Answer stated, and did further depose and say, that the Banking Building of the First National Bank of Hagerstown, Maryland, is not in good repair; that a considerable sum of money would have to be spent thereon at this time to put the same in proper condition and repair, that said Banking Building is an antiquated one, and has been in use for many years, and that he verily believes that the location of said Building is a most admirable one for an office building, and that the expenditure of the funds necessary to erect the new building contemplated would be a most profitable investment of the funds of the Bank.

S. LEWIS LAMKIN.

Sworn and subscribed this twenty-sixth day of March, A. S., 1909, before me, a Notary Public of the State of Maryland, residing in Hagerstown, Washington County, Maryland.

JOHN D. TURNER,
Notary Public.

[Notary's Seal.]

## AFFIDAVITS ON BEHALF OF DEFENDANTS.

Filed March 27th, 1909.

(45)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT, IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al.

Louis Rose of Washington County, in the State of Maryland, being duly sworn, doth depose and say,

That I am a resident of Washington County, in the State of Maryland, and that I am engaged in the shoe business, and am the owner of considerable real estate in Hagerstown, Maryland.

That the Town of Hagerstown has a population of about eighteen thousand people, is a thriving business and manufacturing town and railroad center, and that it is at this time growing very rapidly. That I know the property of the First National Bank of Hagerstown, Maryland, situated on the North side of West Washington Street in said Town, and separated from the Hotel Hamilton building by an alley, and fronting forty one (41) feet on said West Washington Street, and running back two hundred and forty (240) feet to an alley. That said property is located in the center of the business portion of the Town of Hagerstown, adjacent to the Hotel Hamilton, next door to the People's National Bank, nearly opposite the County Court House, near the City Savings Bank, opposite the Banking House of Eavey Lane & Company and the Maryland Surety and Trust Company, not far from the (46) Hagerstown Bank and the Mechanic's Loan and Savings Institute, and within a long block of the Public Square of said Town. That the present banking building has been in use for many years, is antiquated, and not in first class repair and is not a modern up-to-date banking house. That the location of said Bank is a most desirable one for a six story office building, such as the Directors of said Bank contemplate erecting.

That there is a constant demand for offices in this particular locality. That in the opinion of this deponent the investment of the funds of the Bank in a building, such as is contemplated, will prove a most productive one, and that it will be a wise, judicious and businesslike act on the part of the Board of Directors of said Bank to erect such a building at

this time; that the rents from such an office building will lessen the rent of the Banking House itself, and be the means of providing a Banking House at little or no expense to the Stockholders thereof, and prove a safe investment of the funds of the Bank. That the lot of ground aforesaid is worth, exclusive of the buildings thereon, at a conservative valuation, and in comparison to other lots recently sold in the vicinity of this Bank, from thirty-five to forty thousand dollars.

That he deems it prudent and wise and businesslike to build the contemplated building at least six stories high, and in his opinion the situation of the building and *it's* desirability as an office building demands that it be built not less than six stories in height.

LOUIS ROSE.

Sworn and subscribed this twenty-sixth day of March, A. D. 1909, before me, the subscriber, a Notary Public of the State of Maryland, residing in Washington County, Maryland.

JOHN D. TURNER,
Notary Public.

[Seal of Notary.]

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT, IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al.
(47)

Samuel Emmert of Washington County, in the State of Maryland, being duly sworn, doth depose and say,

That I am a resident of Washington County, in the State of Maryland, and that I am engaged in the wholesale and retail hardware business, having the largest hardware business in Western Maryland. My place of business is nearly opposite the First National Bank, and am one of the largest real estate owners in Hagerstown, Maryland.

That the Town of Hagerstown has a population of about eighteen thousand people, is a thriving business and manufacturing town and railroad center, and that it is at this time growing very rapidly. That I know the property of the First National Bank of Hagerstown, Maryland, situated on the North side of West Washington Street in said Town, and separated from the Hotel Hamilton building by an alley, and fronting forty one (41) feet on said West Washington Street,

and running back two hundred and forty (240) feet to an alley. That said property is located in the center of the business portion of the Town of Hagerstown, adjacent to the Hotel Hamilton, next door to the People's National Bank, nearly opposite the County Court House, near the City Savings Bank, opposite the Banking House of Eavey Lane & Company and the Maryland Surety and Trust Company, not far from the (48) Hagerstown Bank and the Mechanic's Loan and Savings Institute, and within a long block of the Public Square of said Town. That the present banking building has been in use for many years, is antiquated, and not in first class repair and is not a modern up-to-date banking house. That the location of said Bank is a most desirable one for a six story office building, such as the Directors of said Bank contemplate erecting.

That there is a constant demand for offices in this particular locality. That in the opinion of this deponent the investment of the funds of the Bank in a building, such as is contemplated, will prove a most productive one, and that it will be a wise, judicious and businesslike act on the part of the Board of Directors of said Bank to erect such a building at this time; that the rents from such an office building will lessen the rent of the Banking House itself, and be the means of providing a Banking House at little or no expense to the Stockholders thereof, and prove a safe investment of the funds of the Bank. That the lot of ground aforesaid is worth, exclusive of the buildings thereon, at a conservative valuation, and in comparison to other lots recently sold in the vicinity of this Bank, from thirty-five to forty thousand dollars.

That he deems it prudent and wise and businesslike to build the contemplated building at least six stories high, and in his opinion the situation of the building and *it's* desirability as an office building demands that it be built not less than six stories in height.

SAMUEL EMMERT.

Sworn and subscribed this twenty-sixth day of March, A. D. 1909, before me, the subscriber, a Notary Public of the State of Maryland, residing in Washington County, Maryland.

JOHN D. TURNER,
Notary Public.

[Seal of Notary.]

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT, IN AND FOR THE DISTRICT OF MARYLAND.

(49)

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al.

Jacob E. Fisher of Washington County, in the State of Maryland, being duly sworn, doth depose and say,

That I am a resident of Washington County, in the State of Maryland, and that I am engaged in the real estate and auctioneering business, and the owner of considerable real estate in Hagerstown, Maryland. I am conversant with the value of real estate in the Town, and have sold as auctioneer and as real estate agent, a great many pieces of real estate, in Hagerstown during the past twenty-five years, and know the value of real estate in said town.

That the Town of Hagerstown has a population of about eighteen thousand people, is a thriving business and manufacturing town and railroad center, and that it is at this time growing very rapidly. That I know the property of the First National Bank of Hagerstown, Maryland, situated on the North side of West Washington Street in said Town, and separated from the Hotel Hamilton building by an alley, and fronting forty one (41) feet on said West Washington Street, and running back two hundred and forty (240) feet to an alley. That said property is located in the center of the business portion of the Town of Hagerstown, adjacent to the Hotel Hamilton, next door to the People's National Bank, nearly opposite the County Court House, near the City Savings Bank, opposite the Banking House of Eavey Lane & Company and the Maryland Surety and Trust Company, not far from the (50) Hagerstown Bank and the Mechanic's Loan and Savings Institute, and within a long block of the Public Square of said Town. That the present banking building has been in use for many years, is antiquated, and not in first class repair and is not a modern up-to-date banking house. That the location of said Bank is a most desirable one for a six story office building, such as the Directors of said Bank contemplate erecting.

That there is a constant demand for offices in this particular locality. That in the opinion of this deponent the investment of the funds of the Bank in a building, such as is contemplated, will prove a most productive one, and that it will be a wise, judicious and businesslike act on the part of the Board of Directors of said Bank to erect such a building at

this time; that the rents from such an office building will lessen the rent of the Banking House itself, and be the means of providing a Banking House at little or no expense to the Stockholders thereof, and prove a safe investment of the funds of the Bank. That the lot of ground aforesaid is worth, exclusive of the buildings thereon, at a conservative valuation, and in comparison to other lots recently sold in the vicinity of this Bank, from thirty-five to forty thousand dollars.

That he deems it prudent and wise and businesslike to build the contemplated building at least six stories high, and in his opinion the situation of the building and it's desirability as an office building demands that it be built not less than six stories in height.

JACOB E. FISHER.

Sworn and subscribed this twenty-sixth day of March, A. D. 1909, before me, the subscriber, a Notary Public of the State of Maryland, residing in Washington County, Maryland.

JOHN D. TURNER,
Notary Public.

[Seal of Notary.]

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT, IN AND FOR THE DISTRICT OF MARYLAND.

(51)

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al.

Wm. L. Hammond of Washington County, in the State of Maryland, being duly sworn, doth depose and say,

That I am a resident of Washington County, in the State of Maryland, and that I am at present Mayor of Hagerstown.

That the Town of Hagerstown has a population of about eighteen thousand people, is a thriving business and manufacturing town and railroad center, and that it is at this time growing very rapidly. That I know the property of the First National Bank of Hagerstown, Maryland, situated on the North side of West Washington Street in said Town, and separated from the Hotel Hamilton building by an alley, and fronting forty one (41) feet on said West Washington Street, and running back two hundred and forty (240) feet to an alley. That said property is located in the center of the business portion of the Town of Hagerstown, adjacent to the Hotel

Hamilton, next door to the People's National Bank, nearly opposite the County Court House, near the City Savings Bank, opposite the Banking House of Eavey Lane & Company and the Maryland Surety and Trust Company, not far from the (52) Hagerstown Bank and the Mechanic's Loan and Savings Institute, and within a long block of the Public Square of said Town. That the present banking building has been in use for many years, is antiquated, and not in first class repair and is not a modern up-to-date banking house. That the location of said Bank is a most desirable one for a six story office building, such as the Directors of said Bank contemplate erecting.

That there is a constant demand for offices in this particular locality. That in the opinion of this deponent the investment of the funds of the Bank in a building, such as is contemplated, will prove a most productive one, and that it will be a wise, judicious and businesslike act on the part of the Board of Directors of said Bank to erect such a building at this time; that the rents from such an office building will lessen the rent of the Banking House itself, and be the means of providing a Banking House at little or no expense to the Stockholders thereof, and prove a safe investment of the funds of the Bank. That the lot of ground aforesaid is worth, exclusive of the buildings thereon, at a conservative valuation, and in comparison to other lots recently sold in the vicinity of this Bank, from thirty-five to forty thousand dollars.

That he deems it prudent and wise and businesslike to build the contemplated building at least six stories high, and in his opinion the situation of the building and it's desirability as an office building demands that it be built not less than six stories in height.

WM. L. HAMMOND,
Mayor of Hagerstown, Md.

Sworn and subscribed this twenty-sixth day of March, A. D. 1909, before me, the subscriber, a Notary Public of the State of Maryland, residing in Washington County, Maryland.

JOHN D. TURNER,
Notary Public.

[Seal of Notary.]

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT, IN AND FOR THE DISTRICT OF MARYLAND.

(53)

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al.

John W. Stonebraker of Washington County, in the State of Maryland, being duly sworn, doth depose and say.

That I am a resident of Washington County, in the State of Maryland, and that I am engaged in the manufacture of paper and the owner of considerable real estate in Hagerstown and Washington County and President of the Washington County Agricultural and Mechanical Association, and have lived in Hagerstown for more than fifty years.

That the Town of Hagerstown has a population of about eighteen thousand people, is a thriving business and manufacturing town and railroad center, and that it is at this time growing very rapidly. That I know the property of the First National Bank of Hagerstown, Maryland, situated on the North side of West Washington Street in said Town, and separated from the Hotel Hamilton building by an alley, and fronting forty one (41) feet on said West Washington Street, and running back two hundred and forty (240) feet to an alley. That said property is located in the center of the business portion of the Town of Hagerstown, adjacent to the Hotel Hamilton, next door to the People's National Bank, nearly opposite the County Court House, near the City Savings Bank, opposite the Banking House of Eavey Lane & Company and the Maryland Surety and Trust Company, not far from the (54) Hagerstown Bank and the Mechanic's Loan and Savings Institute, and within a long block of the Public Square of said Town. That the present banking building has been in use for many years, is antiquated, and not in first class repair and is not a modern up-to-date banking house. That the location of said Bank is a most desirable one for a six story office building, such as the Directors of said Bank contemplate erecting.

That there is a constant demand for offices in this particular locality. That in the opinion of this deponent the investment of the funds of the Bank in a building, such as is contemplated, will prove a most productive one, and that it will be a wise, judicious and businesslike act on the part of the Board of Directors of said Bank to erect such a building at this time; that the rents from such an office building will lessen the rent of the Banking House itself, and be the means of pro-

viding a Banking House at little or no expense to the Stockholders thereof, and prove a safe investment of the funds of the Bank. That the lot of ground aforesaid is worth, exclusive of the buildings thereon, at a conservative valuation, and in comparison to other lots recently sold in the vicinity of this Bank, from thirty-five to forty thousand dollars.

That he deems it prudent and wise and businesslike to build the contemplated building at least six stories high, and in his opinion the situation of the building and it's desirability as an office building demands that it be built not less than six stories in height.

JOHN W. STONEBRAKER.

Sworn and subscribed this twenty-sixth day of March, A. D. 1909, before me, the subscriber, a Notary Public of the State of Maryland, residing in Washington County, Maryland.

JOHN D. TURNER,
Notary Public.

[Seal of Notary.]

**AFFIDAVIT OF CHARLES A. LITTLE ON BEHALF OF DEFENDANTS.**

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT, IN AND FOR THE DISTRICT OF MARYLAND.

Filed March 27th, 1909.

(55)

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles M. Littel, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Willson, Harvey H. Heyser, and S. Lewis Lamkin.

Charles A. Little, being duly sworn, doth depose and say, that he is an Attorney-at-Law, and that he has been such since 1883.

That as attorney for the First National Bank of Hagerstown, Maryland, he made an examination of the Land Records for Washington County, in the State of Maryland, for the pur-

pose of finding out what title, if any, the First National Bank of Hagerstown, Maryland, had to the land now occupied by it, (56) and upon which its Banking House is erected. And he found, by reference to said Land Records, that one William Heyser owned the same, and that on April 3rd, 1807, he conveyed the same as the Eastern most half of Lot No. 80, on the plan of Elizabeth Town (now Hagerstown) 41 feet in breadth and 240 feet in length to Henry Kealhofer, said deed being of Record in Liber S, folio 647, of said Land Records.

On May 21st, 1844, said Henry Kealhofer conveyed said lot in trust to George Kealhofer, said deed being recorded in Liber O. H. W. No. 1, folio 939, of said Land Records.

On June 28th, 1852, George Kealhofer and wife conveyed the same to Levi Easton, said deed being of record in Liber I. N. No. 7, folio 27, of said Land Records.

On April 3rd, 1852, Henry Kealhofer, Anna P. Kealhofer, John Schnebly, Eliza Schnelby and Louisa Kealhofer conveyed the same to Levi Easton, said deed being of record in Liber I. N. No. 7, folio 28, of said Land Records.

On February 24th, 1857, Levi Easton and Hezekiah Easton conveyed the property in trust to J. Dixon Roman, said deed being of record in Liber I. N. No. 11, folio 600, of said Land Records.

On April 28th, 1857, J. Dixon Roman, Trustee, conveyed the property to the Hagerstown Savings Bank, said deed being of record in Liber I. N. No. 11, folio 771 of said Land Records.

The Certificate of Organization of the First National Bank of Hagerstown, Maryland, shows that the said Hagerstown Savings Bank was converted into the First National Bank of Hagerstown, Maryland, under the provisions of section 44 of the Act of Congress, approved June 3rd, 1864, and the above described lot of ground became the property of the said First National Bank of Hagerstown, Maryland, and the said *First National Bank of Hagerstown, Maryland, and the said* lot of ground has been in the possession of the said First National (57) Bank of Hagerstown, Maryland, ever since its organization, and the said Bank is the owner of said property.

And further deposing this deponent says that immediately after the meeting of March 9, 1909, at which the letter of protest of the complainant, referred to as Exhibit C. had been read, the president of the said Bank requested this deponent to communicate with the Comptroller of the Currency, and inform him of the contemplated improvements in the said Bank building, and to inquire if there was anything in the National Banking Laws prohibiting the construction of such a building, and in response to said letter that this deponent received the following reply from the Deputy Comptroller of the Currency at Washington:

"Treasury Department,

Washington, March 13, 1909.

Mr. C. A. Little,
Hagerstown, Maryland.

Dear Sir:

Your letter of the 9th instant received, stating that the directors contemplate making improvements in the bank building and inquiring if there is anything in the national banking laws prohibiting the construction of a building which will contain floors for offices to be rented out by the bank, as well as the banking room.

Your attention is called to the case of Brown v. Schleir, 118 Fed. Rep., 981, in which the court held that—

"If the land which a national bank purchases or leases for the accommodation of its business is very valuable, it may exercise the same rights that belong to other landowners of improving it in a way that will yield the largest income, lessen its own rent, and render that part of its funds which are invested in (58) realty most productive."

Respectfully,

(Signed) W. J. FOWLER,
Deputy Comptroller."

CHARLES A. LITTLE,

Sworn and subscribed this 27th day of March, A. D., 1909, before me, a Notary Public of the State of Maryland, residing in Baltimore City, Maryland.

[Seal of Notary]

WM. H. H. RALEIGH,
Notary Public.

## ANSWER OF WILLIAM WINGERT.

(59) Filed March 27, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al.

To the Honorable the Judges of the said Court:

This defendant answering says that he admits the matters and things alleged in the plaintiffs bill of complaint and avers that he as director has steadily and constantly opposed the erection of a six story office building on the lot now occupied by the First National Bank of Hagerstown, Maryland.

WILLIAM WINGERT.

STATE OF MARYLAND,
Washington County, to-wit:

I hereby certify that on this 26th day of March, A. D., 1909, before me the subscriber, a Notary Public in and for Washington County, Maryland, personally appeared William Wingert and made oath in due form of law that the matters and facts as above stated are true to the best of his knowledge and belief.

In testimony whereof I have hereunto set my hand and affixed this the notarial seal of my office the day and date last above written.

A. YINGLING,
Notary Public.

[Notarial Seal] My Commission expires 2 day of May, 1910.

## COMPLAINANT'S MOTION NOT TO RECEIVE THE ANSWER OF THE FIRST NATIONAL BANK.

(60)

Filed March 31, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland.

To the Honorable, the Judges of Said Court:

The plaintiff in the above entitled cause, by his solicitors H. F. Wingert, Miller Wingert and Alex. Neill, Jr., moves the court not to receive the answer of the First National Bank of Hagerstown, Maryland, filed in this cause and assigns as reasons therefor:

That the paper writing, purporting to be the answer filed by the First National Bank of Hagerstown, Maryland, in the above entitled cause and purporting to be the answer of the said bank, is not the answer of the said, the First National Bank of Hagerstown, Maryland.

That the answer filed by the First National Bank of Hagerstown, Maryland, in the above entitled cause and purporting to be the answer of said bank is illegal, void and of no effect.

That the paper writing, purporting to be the answer filed by the First National Bank of Hagerstown, Maryland, in the above entitled cause and purporting to be the answer of said Bank is illegal, void and of no effect.

That the said paper purporting to be the answer filed by the First National Bank of Hagerstown, Maryland, and signed by F. W. Mish, President, was not the act of the said, the First National Bank of Hagerstown, Maryland, as no meeting of the directors of the said Bank was ever legally called or le-
(61) gally held at which the said F. W. Mish, president as aforesaid was authorized and directed to sign the said answer of the said bank filed in this cause.

That the said paper purporting to be the answer filed by the First National Bank of Hagerstown, Maryland, and signed by F. W. Mish, president, was not the act of the said the First National Bank of Hagerstown, Maryland, as no meeting of the directors of the said bank was ever legally called or legally

held at which the answer filed in this cause was submitted to the directors of said bank for their consideration or approval.

Respectfully submitted,

H. F. WINGERT,
MILLER WINGERT,
ALEX. NEILL, JR.,
Attys. for Plaintiff.

**AFFIDAVIT OF LEWIS P. WINGERT ON BEHALF OF THE COMPLAINANT.**

(62)

Filed March 31, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland.

STATE OF MARYLAND,
Baltimore City, } to-wit:

I hereby certify that on this 31st day of March, in the year nineteen hundred and nine, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, personally appeared Lewis P. Wingert and made oath in due form of law that he is the plaintiff in the above cause and that in so far as he is advised William Wingert, a director of the First National Bank of Hagerstown, Maryland, had no notice of any special meeting of said directors at which Frank W. Mish, president of said bank was authorized by said directors to file an answer in the name of the said bank to the bill of complaint in this cause filed, and that he is advised that such authority was not given the said Mish, president of said bank to file an answer in the name and on behalf of said bank in these proceedings, at any regular meeting of said Board of Directors.

JOHN T. FARDY,
Notary Public.

[Notary's Seal]

## AFFIDAVIT OF WILLIAM WINGERT ON BEHALF OF THE COMPLAINANT.

(63)

Filed March 31, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland.

STATE OF MARYLAND,
Baltimore City, } to-wit:

I hereby certify that on this 31st day of March, in the year nineteen hundred and nine, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, personally appeared William Wingert and made oath in due form of law that he is one of the Directors of the First National Bank of Hagerstown, Maryland, duly qualified and acting, that as such he attended all the regular meetings of the Board of Directors of said Bank and did likewise attend any and all special meetings of said Board of Directors of which he was notified or had knowledge. That at no regular meeting as aforesaid nor at any special meeting of which he had notice was Frank W. Mish, the president of said Bank, authorized by said Board of Directors to file any answer in the name of and on the part of said Bank in the proceedings in the above cause, and that any paper filed in said cause was filed without authority therefor being given at any regular meeting of said Board of Directors at any special meeting of which he had knowledge.

[Notary's Seal]

JOHN T. FARDY,
Notary Public.

## AFFIDAVIT OF WILLIAM WINGERT ON BEHALF OF THE COMPLAINANT.

Filed March 31, 1909.

(64)

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al.

STATE OF MARYLAND,
Baltimore City, to-wit:

I hereby certify that on this 31st day of March, in the year 1909 before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, personally appeared, William Wingert, a Director of the First National Bank of Hagerstown, Maryland, and made oath in due form of law that the two photographs herewith attached to this affidavit and marked Exhibit "Photographs" are—true, accurate and complete photographs of the First National Bank Building, in Hagerstown, Maryland, now used, owned and occupied by said First National Bank of Hagerstown, Maryland.

JOHN T. FARDY,
Notary Public.

[Notary's Seal]

## AFFIDAVIT OF WILLIAM WINGERT ON BEHALF OF THE COMPLAINANT.

Filed March 31, 1909.

(64)

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al.

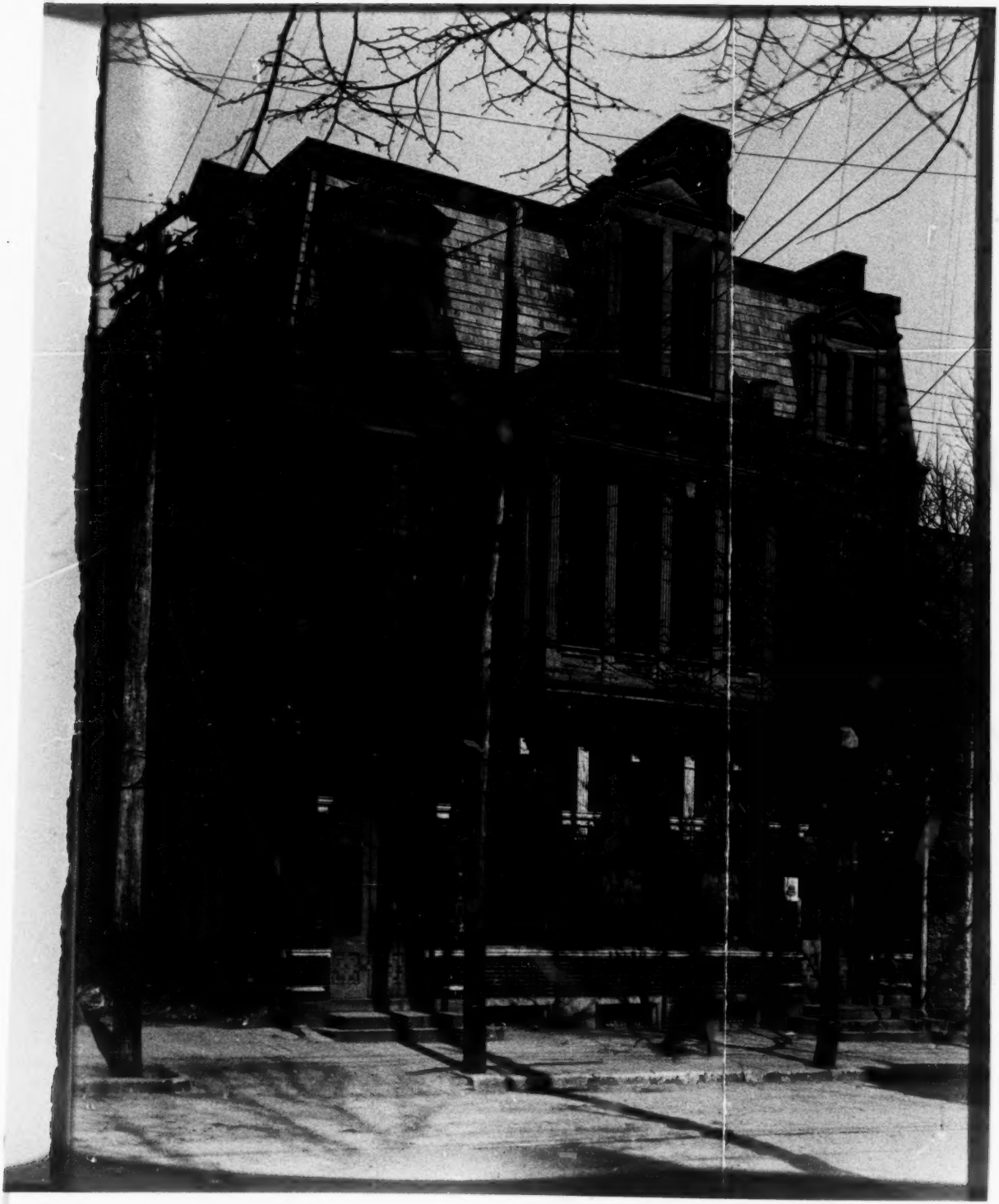
STATE OF MARYLAND,
Baltimore City, } to-wit:

I hereby certify that on this 31st day of March, in the year 1909 before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, personally appeared, William Wingert, a Director of the First National Bank of Hagerstown, Maryland, and made oath in due form of law that the two photographs herewith attached to this affidavit and marked Exhibit "Photographs" are—true, accurate and complete photographs of the First National Bank Building, in Hagerstown, Maryland, now used, owned and occupied by said First National Bank of Hagerstown, Maryland.

JOHN T. FARDY,
Notary Public.

[Notary's Seal]

# EXHIBITS NOT SUITABLE FOR MICRO-FILMING



## AFFIDAVIT OF WILLIAM WINGERT AND LEWIS P. WINGERT ON BEHALF OF COMPLAINANT.

Filed March 31, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MARYLAND.

(67)

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al.

STATE OF MARYLAND,
Baltimore City, } to-wit:

I hereby certify that on this 31st day of March, in the year 1909, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, personally appeared William Wingert & Lewis P. Wingert and made oath in due form of law that the building now owned by Eavey, Lane & Company and the Maryland Security and Trust Company, is located directly opposite the building of the First National Bank of Hagerstown, Maryland; and that it is a three story building, the first story of which is used for Banking business and the other stories are rented for the purpose of offices, that on the second and third stories of said building there are and have been for a long time offices which are vacant and without tenants, and that certain offices adjoining the Hotel Hamilton and known as the offices in Hamilton Row, which are a part and connected with the Hotel Hamilton, which is the next building on the West of the First National Bank Building, are and have been for some time vacant and unrented.

JOHN T. FARDY,
Notary Public.

[Notary's Seal]

## AFFIDAVIT OF FRANK W. MISH ON BEHALF OF DEFENDANTS.

(68)

Filed March 31, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland.

STATE OF MARYLAND, Baltimore City. } to-wit:

I hereby certify that on this 31st day of March, A. D., 1909, before me, the subscriber, a notary public of the State of Maryland, in and for Baltimore City, personally appeared Frank W. Mish, and after having duly sworn did depose and say that he is the president of the said the First National Bank of Hagerstown, Md. That at the regular meeting of the Board of Directors of said Bank held in the Directors' room in said Bank on the 16th day of March, A. D., 1909, the said Board of Directors passed a resolution directing, Charles A. Little, the attorney of said Bank, to take such steps as were necessary to defend the bank in the above entitled cause, to prepare and file such answers and papers as were necessary for said defense and to employ such additional counsel as he deemed necessary and that said answer of said Bank now filed in this cause was before execution submitted to the president and all the Directors of said Bank, except William Wingert who this deponent was advised was antangonistic to any defense.

F. W. MISH.

In testimony whereof I have hereunto set my hand and affix my official seal.

[Notary's Seal]

DAVID A. RALSTON,
Notary Public.

## ORDER OF COURT OVERRULING MOTION OF COMPLAINANT NOT TO RECEIVE ANSWER OF THE FIRST NATIONAL BANK.

(69)

Filed March 31, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al. } No. 74 Equity F.

The motion of the complainants asking the court not to receive the answer of the First National of Hagerstown, Maryland, filed in this cause on the 31st day of March, A. D., 1909, having been read and considered it is on this 31st day of March, A. D., 1909, ordered, adjudged and decreed by the Circuit Court of the United States in and for the District of Maryland sitting in equity that the said motion be and the same is hereby overruled.

THOS. J. MORRIS, Judge.

## DECREE OF COURT DENYING MOTION FOR PRELIMINARY INJUNCTION AND DISSOLVING RESTRAINING ORDER.

(70)

Filed March 31, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al.

The motion for a preliminary injunction made in this cause having been heard, the proceedings were read and considered and the solicitors for the respective parties heard, it is thereupon this 31st day of March, 1909, adjudged, ordered and decreed by the Circuit Court of the United States in and for the District of Maryland, that the motion for a preliminary in-

junction be and the same is hereby denied; and it is further ordered that the restraining order heretofore passed in this cause be and the same is hereby dissolved.

THOS. J. MORRIS, Judge.

## REPLICATION.

(71) Filed April 3rd, 1909.

In the Circuit Court of the United States for the *Fourth* District of Maryland.

Louis F. Wingert, Plaintiff,
*vs.*
First National Bank of Maryland et al., Defendants.

This repliant saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto saith, that he doth, and will aver, maintain and prove his said bill to be true, certain, and sufficient in the Law to be answered unto by said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in law, to be replied unto by this repliant, without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true, all which matters and things this repliant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays as in and by his said bill he hath already prayed.

HENRY F. WINGERT,
MILLER WINGERT,
ALEX. NEILL, Jr.,
Attys. for Plaintiff.

## PETITION OF COMPLAINANT FOR RESTRAINING ORDER AND ORDER OF COURT THEREON.

(72) Filed May 10, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al. } No. 74 Equity F.

To the Honorable the Judge of said Court:

This the petition of Lewis P. Wingert, the plaintiff in the above entitled cause, respectfully shows:

1. That on March 10th, 1909, your petitioner filed in this court his bill of complaint, praying for an injunction restraining the First National Bank of Hagerstown, Maryland, its directors and servants, from tearing down and demolishing its three story bank building, with the intention of erecting in its stead a six story office building.

2. That upon the reading of said bill of complaint an order was passed on said date in said cause restraining the defendants, the First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John G. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, Harvey H. Heyser and S. Lewis Lamkin, and each of them, their agents and servants, until the hearing of the plaintiff's motion for a preliminary injunction, from tearing down and demolishing the bank building of the First National Bank of Hagerstown, Maryland, now erected on its lot on West Washington street, in the Town of Hagerstown, Maryland, with the purpose and design of erecting in its stead a six story modern (73) office building.

3. That said hearing on said motion of plaintiff for a preliminary injunction was set for March 31st, 1909, the court directing the defendants aforesaid to show cause, if any they have, on or before March 27th, 1909, why said preliminary injunction should not be granted as prayed in said bill of complaint; provided a copy of said bill of complaint and of this

order be served on the First National Bank of Hagerstown, Maryland, on or before the 15th day of March, 1909; and provided further that a copy of this order be served on each of the defendants named in said bill on or before said 15th day of March, 1909, complainant to have until the 20th day of March, 1909, to file affidavits in support of its said application for a preliminary injunction and the defendants to have until the 27th day of March, 1909, to file affidavits in their behalf, and the complainant to have until the 31st day of March, 1909, to file affidavits in rebuttal, if such shall be deemed necessary.

4. That on March 20th, 1909, the plaintiff filed in said cause certain affidavits in support of his said bill of complaint; that on March 27th, 1909, the said defendants filed in said cause their answer to the bill of complaint of the plaintiff, and certain affidavits in support of said defendant's answer.

5. That on March 31st, 1909, the day set for the hearing of plaintiff's motion for a preliminary injunction, the plaintiff filed a motion in said cause moving the court not to receive the answer of the defendant, said First National Bank of Hagerstown, Maryland, on the ground that the same was illegal and void, and that thereupon the defendant, the said First National Bank, filed its answer to the motion of the plaintiff not to receive said defendant's answer, and that upon hearing counsel for (74) both plaintiff and defendants respectively the court overruled the motion of the plaintiff aforesaid.

6. That thereupon argument upon plaintiff's motion for a preliminary injunction was heard by the court; whereupon the motion for a preliminary injunction was denied and the restraining order passed in said cause on March 10th, 1909, was dissolved.

7. That thereupon counsel for the defendant, the said First National Bank, moved the court to dismiss the bill of complaint of the plaintiff filed in said cause, which said motion was forthwith overruled.

8. That on April 3rd, 1909, the plaintiff filed his replication in said cause.

9. That on April 5th, 1909, upon application by the plaintiff, United States Commissioner, Alexander R. Hagner, at Hagerstown, in the State of Maryland, fixed Wednesday, April 14th, 1909, for taking testimony in said cause on the part of the plaintiff in support of the allegations in his said bill of complaint.

10. That testimony on behalf of the plaintiff was so taken before Alexander R. Hagner, United States Commissioner, at Hagerstown, Maryland, on April 14th and April 19th, 1909, in the presence of the counsel for the plaintiff and the defendants respectively.

11. That on April 19th, 1909, the testimony of the plaintiffwas concluded before said United States Commissioner Alexander R. Hagner, at Hagerstown, Maryland, and that notice was given to the defendants' counsel on April 19th, 1909, at Hagerstown, Maryland, that the testimony of the plaintiff was closed and that said notice was entered in the testimony by the commissioner aforesaid.

12. That your petitioner is not advised nor does he know that the defendant in this cause, to-wit, the First National (75) Bank, intends to take testimony in support of its answer filed in said cause nor does this petitioner have any knowledge thereof, although ample time has been afforded the said defendant for taking such testimony and for giving notice of its intention so to do.

13. That the plaintiff in the above cause has exercised all due diligence in bringing forward said cause for final hearing.

14. That at a regular meeting of the Board of Directors of the said First National Bank of Hagerstown, Maryland, held May 4th, 1909, it was decided to move the place of business of the Bank on May 12th, 1909, to temporary quarters provided for that purpose.

15. That on May 5th, 1909, the front of the Bank Building of the said First National Bank of Hagerstown, Maryland, was placarded with large cards as follows:

"FIRST NATIONAL BANK WILL MOVE TO S. W. CORNER PUBLIC SQUARE, MAY 12, 1909, WHILE REBUILDING."

16. That at a special meeting of the Board of Directors of the said First National Bank of Hagerstown, Maryland, held May 6th, 1909, it was decided to place forthwith an order for the steel and marble needed for the erection of the said six story office building aforesaid.

17. That your petitioner is advised and verily believes that the actual work of tearing down and demolishing the three story Bank Building of the said First National Bank of Hagerstown,

Maryland, will begin immediately after moving to said temporary quarters on May 12th, 1909.

18. That the plaintiff's right of action in the above entitled cause will be irretrievably impaired.

19. That pending final decree, the plaintiff in the above entitled cause is without process to preserve unimpaired his right of action in said cause, except through the intervention of your Honorable Court.

(76) Your petitioner, therefore, prays your Honorable Court to pass an order in said cause, restraining the said First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, Harvey H. Heyser and S. Lewis Lamkin, their agents and servants, from tearing down and demolishing the said Bank Building of the said First National Bank, pending final decree of this court in this cause.

That your petitioner may have such other and further relief as his case may require.

Respectfully submitted.

LEWIS P. WINGERT.

H. F. WINGERT,
MILLER WINGERT,
R. H. BAYARD,
Solicitors.

STATE OF MARYLAND,
Baltimore City, } to-wit:

I hereby certify that on this tenth day of May, 1909, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Lewis P. Wingert, and made oath in due form of law that the matters and facts stated in the foregoing petition are true, to the best of his knowledge and belief.

Witness my hand and official seal.

JOHN A. HENKUS,
Notary Public.

[Notary Seal]

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MARYLAND.

(77)

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al.

To the Honorable the Judge of said Court:

Lewis P. Wingert, petitioner, the plaintiff in the above entitled cause, by Henry F. Wingert, Miller Wingert and Richard H. Bayard, his solicitors, moves the court to pass an order in said cause restraining the defendants from tearing down the Bank Building of the said First National Bank of Hagerstown, Maryland, pending final decree in this cause.

LEWIS P. WINGERT.

H. F. WINGERT,
MILLER WINGERT,
R. H. BAYARD,
Solicitors.

Upon the application of Lewis P. Wingert, petitioner, the plaintiff in the above entitled cause, it is on the day of May, 1909, ordered by the Circuit Court of the United States in and for the District of Maryland, that until the passage of the final decree in the case and until the further order of this court, upon the filing of a bond by the plaintiff in the penalty of dollars, with security to be approved by the clerk of this court, the defendants, the First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, (78) Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, Harvey H. Heyser and S. Lewis Lamkin, and each of them, their agents and servants, be and they are hereby restrained from tearing down and demolishing the Bank Building of the First National Bank of Hagerstown, Maryland, now erected on its lot on West Washington street, in the Town of Hagerstown, Maryland, until the final decree in this cause.

And it is further ordered that a copy of this order be served on each of the defendants.

The application for a restraining order contained in the foregoing petition is hereby denied.

May 10, 1909. THOS. J. MORRIS, Judge.

## ORDER OF COURT LIMITING DEFENDANT'S TIME FOR TAKING TESTIMONY.

(79) Filed May 17, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al.

Upon the application of the plaintiff in the above entitled cause, it is on the 17th day of May, 1909, adjudged and decreed by the Circuit Court of the United States in and for the District of Maryland, that the defendants, the First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, Harvey H. Heyser, and S. Lewis Lamkin and each of them be and they are hereby directed to close their testimony in the above entitled cause on or before the 3rd day of June, 1909, provided a copy of this order be served on the defendants or their solicitor or solicitors on or before May 20th, 1909.

THOS. J. MORRIS, Judge.

## PETITION FOR EXTENSION OF TIME OF TAKING DEFENDANT'S TESTIMONY AND ORDER OF COURT THEREON.

(80) Filed May 21, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT, IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, Frank W. Mish, et al.

To the Honorable the Judges of said Court:

The petition of The First National Bank of Hagerstown, Maryland, the directors thereof, excepting William Wingert and S. Lewis Lamkin, the defendants, respectfully represent unto your Honorable Court,

1st.

That after hearing upon the petition for a preliminary injunction in this cause on the 31st day of March last, the plaintiff proceeded to take testimony for the purpose of bringing the question to a final hearing.

2nd.

That on the 19th day of April, the plaintiff concluded the examination of witnesses and the taking of testimony, with the exception of the filing of a certain plat to be used as testimony in said cause, and so notified the defendants, whereupon the defendants by its solicitor, informed the plaintiff that they would not consider the testimony of the plaintiff closed until said plat was filed.

3rd.

(81) That said plat was filed on the 4th day of May, 1909, without the knowledge of the defendants, or its solicitors, who were not apprised of the filing of said plat until the 7th of May, and that the filing of said plat was the actual conclusion of the taking of testimony on the part of the plaintiff.

4th.

That it was the intention of the defendants to proceed without any unreasonable delay with the taking of their testimony, but by reason of the fact that the solicitor for the defendants residing in Hagerstown, Maryland, expected to be engaged in the trial of a number of cases in the Circuit Court for Washington County, at its May Term which began on May 11th, he was not able to fix a day for the taking of the defendants' testimony, and the matter was therefore deferred.

5th.

That by reason of the illness of the judge of the said Circuit Court for Washington County, the business of the said term has not as yet been concluded, and will continue for some time, and Charles A. Little, of the defendants' solicitors, who resides at Hagerstown, Maryland, will be engaged in the trial of cases in said court, and by reason of the uncertainty of the days and dates upon which said cases will be called for trial, cannot now definitely fix a day for the taking of the defendants' testimony in this cause, and that this condition, will, in all probability, continue until the 1st of June.

6th.

That by an order passed by your Honorable Court on the 17th of May, 1909, the defendants in the above cause were directed to close their testimony on or before the 3rd of June, 1909.

7th.

(82) That the defendants desired to proceed with the taking of their testimony and to conclude the same as speedily as possible, but allege that by reason of the condition and circumstances herein set forth, it is almost impossible for them to conclude the taking of their testimony on or before the 3rd of June, as set forth in said order.

8th.

They further allege that they can conclude their testimony by the 12th of June, and they therefore pray your Honorable Court to pass an order in the above entitled cause, extending the time for the conclusion of the defendants' testimony in said cause, until the 12th day of June, 1909, or to such date as to your Honorable Court may seem reasonable and proper.

And as in duty, etc.

CHARLES A. LITTLE,
GEORGE R. GAITHER,
Solicitors for the Defendants.

STATE OF MARYLAND,
Washington County, } to-wit:

I hereby certify that on this 19th day of May, A. D., 1909, before me, the subscriber, a Notary Public of the State of Maryland, in and for the county aforesaid, personally appeared Charles A. Little, one of the solicitors for the defendants in the above entitled cause, and also one of the directors of the First National Bank of Hagerstown, Maryland, one of the defendants in the above entitled cause, and made oath in due form of law that the matters and things set forth in the aforegoing petition, are true and correct as therein stated.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, this 19th day of May, A. D., 1909.

JOHN D. TURNER,
[Notary Seal] Notary Public.

(83) Upon the aforegoing petition and affidavit, it is on this 21st day of May, A. D., 1909, adjudges and decreed by the

Circuit Court of the United States, in and for the District of Maryland, that the defendants, the First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Willson, Harvey H. Heyser, and S. Lewis Lamkin, and each of them, be and they are hereby granted an extension of time for the closing of their testimony in the above entitled cause until the 12th day of June, A. D., 1909, and that the order passed by this court on the 17th day of May, 1909, limiting the taking of the defendants' testimony to June 3rd, be and the same is hereby rescinded, provided a copy of this order be served on the plaintiff, or their solicitor or solicitors, on or before the 24th day of May, A. D., 1909.

THOS. J. MORRIS, Judge.

## PETITION FOR EXTENSION OF TIME FOR FILING TESTIMONY OF THE DEFENDANTS AND ORDER OF COURT THEREON.

(84) Filed June 12th, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT, IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, Frank W. Mish, et al. } No. 74 Equity F.

To the Honorable the Judges of said Court:

The petition of the First National Bank of Hagerstown, Maryland, the directors thereof, excepting William Wingert, and S. Lewis Lambkin, the defendants, respectfully represent unto your Honorable Court.

FIRST.

That since the passage of the order by your Honorable Court extending the time for the closing of the defendants' testimony in the above entitled cause to the 12th of June, 1909, the said defendants have used due diligence in trying to close their testimony at the time above named, namely, June 12th, 1909.

SECOND.

That they closed the taking of their said testimony on the 11th day of June, as early a date as possible, but that by reason of the great amount of testimony taken and the length thereof the stenographer will not have the same finished and in complete form for filing in your Honorable Court until too late in the day, the 12th, to send the same to your Honorable Court to be filed therein as of the 12th.

THIRD.

(85) That the said delay was unavoidable and not caused by any fault on the part of the said defendants or any of them and that the said testimony can be filed in your Honorable on or before Tuesday, the 15th day of June, A. D., 1909, in complete form and your petitioners therefore pray your Honorable Court to grant a further extension of time for the filing of their said testimony until the 15th day of June, A. D., 1909.

And as in duty, etc.

C. A. LITTLE,
GEORGE R. GAITHER,
Solicitors for the Defendants.

STATE OF MARYLAND,
Washington County, } to-wit:

I hereby certify that on this 11th day of June, A. D., 1909, before me, the subscriber, a Notary Public of the State of Maryland in and for the county aforesaid personally appeared Charles A. Little, one of the solicitors for the defendants in the above cause and also one of the directors of the First National Bank of Hagerstown, Maryland, one of the defendants in the above entitled cause and made oath in due form of law that the matters and things set forth in the aforegoing petition are true and correct as therein stated.

In testimony whereof I have hereunto set my hand and affixed my official seal this 11th day of June, A. D., 1909.

[Notary Seal] D. H. GARVER, N. P.

(86) Upon the aforegoing petition and affidavit it is on this 12th day of June, A. D., 1909, adjudged, ordered and decreed by the Circuit Court of the United States for the Fourth Circuit, in and for the District of Maryland, that the defendants in the above entitled cause be and they are hereby granted a

further extension of time for the filing of their testimony in the above cause until the fifteenth day of June, A. D., 1909.

THOS. J. MORRIS,
District Judge.

## COMPLAINANT'S TESTIMONY.

(87)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, and others.
} In Equity.

(88) Hagerstown, Md., April 14, 1909.

Present: H. F. Wingert, Miller Wingert and Alex. Neill, Jr., counsel for plaintiff; Col. C. A. Little, counsel for defendants.

It is hereby stipulated and agreed by and between the counsel for Lewis P. Wingert and the First National Bank of Hagerstown, respectively, that depositions may be taken in Hagerstown, Maryland, by Alexander R. Hagner, U. S. Commissioner for the District of Maryland, at his office in Mealey Row, in said city, to be read in evidence in the case in equity wherein Lewis P. Wingert is complainant and the First National Bank of Hagerstown, Maryland, and others, are defendants, pending in the Circuit Court of the United States for the District of Maryland, that the testimony may be taken in shorthand by a stenographer and written on a typewriter.

And it is further agreed by the respective counsel aforesaid that the order of the court necessary to the taking of depositions of this day be and the same is hereby waived.

On behalf of LEWIS P. WINGERT, plaintiff, the following testimony is introduced:

Personally appeared EDWARD OSWALD, a witness of lawful age, being duly sworn, deposes and says as follows:

(89)

### DIRECT EXAMINATION.

By H. F. WINGERT, Esq.:

Q. State your residence and occupation? A. I live in Hagerstown, Maryland. Am deputy clerk of the Circuit Court for Washington County.

Q. Give the number of years you have served as deputy clerk in the Circuit Court for Washington County? A. I have been there for 23 years.

Q. Are you acquainted with the Land Records of Washington County? A. I am acquainted with the Land Records of Washington County and am accustomed to examining titles.

Q. State if you have examined the Land Records of Washington County for a deed of conveyance of the lot on which the First National Bank of Hagerstown, is located and whether you have found any deed of conveyance conveying the said lot to the First National Bank of Hagerstown, Maryland? A. I searched the records and could not find a deed of conveyance to the First National Bank of Hagerstown of the lot on which the bank is now situated.

Q. State where the lot is located with reference to the Court House? A. It is situated on West Washington street nearly opposite the Court House in Hagerstown, Maryland.

Q. Are you a stockholder in the First National Bank? A. Yes, sir.

### Cross Examination.

By Col. C. A. Little:

Q. Are you conversant with the values of real estate in the neighborhood of the First National Bank? A. Yes, I should say I would be.

Q. What, in your opinion, is the lot on which the First National Bank stands now worth, without the building on it; what would the vacant lot be worth? It is 41 feet front.

(Objected to.)

(90) A. If there were no building there, I should say $40,000.

Q. How long have you lived in Hagerstown? A. All my life, 43 years.

Q. What point in Hagerstown would you consider the center of the business district of the town?

(Objected to.)

A. I would think from the square to Jonathan street and from the Square to Franklin street and then out the other way to Antietam, on Potomac street.

Q. Where is the First National Bank situated? A. On West Washington street between the Public Square and Jonathan street.

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer.

Answer:—I do not know anything further.

EDWARD OSWALD.

Personally appeared LEWIS P. WINGERT, plaintiff, of lawful age, being duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By H. F. WINGERT, Esq.:

Q. State where you live? A. I live in Hagerstown, Maryland.

Q. In what part of the town? A. 118 Prospect street.

(91) Q. What is your business? A. I am treasurer of the Hagerstown Furniture Company and president of the Antietam Hosiery Company.

Q. Are you treasurer of anything else? A. Treasurer for the Wingert heirs and superintendent of the Wingert farms.

Q. Are you a man of some means? Do you own property? A. Yes, sir.

Q. Do you know the value of it? A. Between $60,000 and $70,000 worth of property.

Q. Do you own that much property? A. Yes.

Q. What kind of property is it? A. Both real and personal.

Q. Do you know the First National Bank of Hagerstown? A. Very well.

Q. Did you ever do any business with it? A. Yes.

Q. State what it is? A. I deposit all the money for the Hagersetown Furniture Company, or nearly so, and my own individual account to a certain extent.

Q. Do you own any stock in it? A. Yes.

Q. How much? A. 151 shares.

Q. Do you remember what the last stock of the First National Bank sold at public sale in front of the Court House brought? A. The last I bought brought I guess $31.75.

Q. You don't remember what the last brought that was sold in front of the Court House? A. I do not believe I remember.

Q. What is the par value of this stock? A. $10.00.

(92) Q. Do you know how many shares of stock there are altogether of the Bank? A. Ten thousand shares, par value $10.00 per share.

(Counsel for defendant objects to all the testimony of Lewis P. Wingert up to this point on the ground that the same is irrelevant and has no bearing upon the issues in this cause.)

RE-DIRECT EXAMINATION OF LEWIS P. WINGERT.

Q. Mention those of the directors of the First National Bank that you can think of? A. Dr. Charles McCauley, Wolfgang Newcomer, F. W. Mish, president, Walter D. Willson, C. M. Horst, J. Grason Steffey—I am personally acquainted with all of the directors.

Q. Who is cashier of the Bank at the present time? A. Harvey Heyser.

Q. Who was cashier before Harvey Heyser? A. Mr. John D. Newcomer.

Q. Do you know S. Lewis Lamkin? A. Yes, sir.

Q. What is his business? A. contractor.

Q. What do you know about the financial condition of the First National Bank? A. It is good.

Q. What kind of a building does the First National Bank have? Describe it. A. According to the man who built it—

Q. Describe the building? A. It is a three story brick building.

Q. What about its frontage? A. About 41 feet front.

(93) Q. How about the depth of the building? A. Between 18 and 20 feet.

Q. What about the depth of the lot? A. 219 or 220 feet, I think.

Q. Does the building cover the whole of the lot? A. No, sir.

Q. What about the improvements to the bank building itself; what about the modern conveniences and improvements to it? A. I should say they compare favorably with any of the other banks of the town.

Q. Do they have any gas in the building? A. Yes.

Q. Water? A. Yes.

Q. Electricity? A. I do not think they have.

Q. What about the condition of the room generally, plastering, ceiling, etc.? A. It is in good condition.

Q. Would it be possible to run the bank building back further on the lot without interfering with any other building that is there? A. Yes, without interfering with anything.

Q. Are there any buildings of any consequence on the rear of the lot, back on the alley? A. Not to my knowledge.

Q. Has the bank itself been occupying all of the first floor?

(Objected to as leading.)

A. No, sir.

Q. What part of the first floor of the building does the (94) bank not occupy? A. I would say nearly one-third or one-fourth, anyhow.

Q. Have you been informed that the directors of the First National Bank have decided to tear down the three story building on their lot? A. Yes, sir.

Q. With what intention? A. Of replacing it with a six story office building.

Q. Will you state if you are the plaintiff in this case? A. I am.

Q. Did you address any communication to the directors of the Bank when you received this information? A. I did.

Q. What was the tenor of the letter you addressed to them? A. I guess the main part of it was that I asked them if they were familiar with the National Bank law.

Q. You directed their attention to the National Bank law? A. Yes, more to the National Bank law than anything else.

Q. Did you or not oppose in that letter the tearing down of the present building and the erecting of a six story building? A. I did.

Q. What was the new building to cost? A. $60,000.

Q. State where this bank building of the First National Bank is located? A. It is adjoined on the west by an alley and the Hamilton Hotel and on the east by the Kausler property. It is directly opposite the Eavey, Lane Bank, or the Maryland Trust Co.

Witness is here shown paper and asked—

Q. Is this a copy of the letter addressed to the president and directors of the First National Bank of Hagerstown, Maryland? A. Yes, sir.

(95) (Copy of letter marked "Exhibit L. P. W." identified by the witness and asked to be filed as part of this deposition, is herewith filed.)

Q. What is the height of the adjoining property? A. Two stories.

Q. How high is the second property from the First National Bank? A. Two stories.

Q. What is the height of the Eavey, Lane Building opposite, to which you referred? A. Partly two and partly three stories.

Q. Are there any six stor[illegible] buildings in Hagerstown? A. None.

Q. Are there any five story buildings in Hagerstown? A. Not to my knowledge.

Q. How about the Everly Building? A. One building that is five stories—Everly's store.

Q. Are there any vacant offices in the Eavey, Lane Building?

(Objected to generally.)

A. There are.

Q. Have you had any experience in building at all? A. Some.

Q. Would it be possible to enlarge the present bank building in such a way as to give it all the room it would possibly use without tearing down the present building?

(Objected to generally.)

A. Yes, sir.

Q. Would it be possible to give it more light than at present without tearing down the present building?

(Objected to generally.)

A. It would.

Q. Is it not a fact that there are two trees standing in front of the First National Bank that are two stories high?

(96) (Objected to as leading and generally.)

A. They come to the second story.

Q. Are you acquainted with the Mechanics Loan & Savings Institute?

(Objected to.)

A. I am.

Q. Have you ever been in their banking room?

(Objected to generally.)

A. I have.

Q. How does the amount of space that they have for banking purposes compare with the amount of space which the First National Bank has?

(Objected to generally.)

A. They do not have as much.
Q. How about the City Savings Bank?

(Objected to generally.)

A. That is not near so large.
Q. Do you know the Hagerstown Bank? A. Yes.
Q. Do you do any business with that Bank? A. Yes, sir.
Q. Do you have occasion to go in there at any time? A. At least from four to six times a week.
Q. What is the height of the Hagerstown Bank?

(Objected to generally.)

A. Two stories.
Q. How about the director's room and the offices?

(Objected to generally.)

A. One story.
Q. Are you a stockholder in the Hagerstown Bank?

(Objected to generally.)

(97) A. I am.
Q. How do the holdings of the Wingert family in the Hagerstown Bank compare with the holdings of the Wingert family in the First National Bank?

(Objected to generally.)

A. Just about half.
Q. I mean the total value? A. More than one-half.
Q. The total value of the holdings of the Wingert family, not the number of shares?

(Objected to.)

A. Very nearly as great.
Q. Do you ever go into the Second National Bank of Hagerstown? A. Yes, I hold stock in the Second National Bank.
Q. How does the interior condition and equipment of the Second National Bank compare with the interior condition and equipment of the First National Bank?

(Objected to generally.)

A. I would say they are about the same.
Q. Do you have stock in any other banks in Washington County?

(Objected to generally.)

A. No, sir, I believe that is all.
Q. Do you have any stock in the Washington County National Bank of Williamsport?

(Objected to.)

A. I have.
Q. What about the height of the building over there?

(Objected to generally.)

A. That is a one and one-half story building.
Q. I forgot to ask you about the height of the Second National Bank Building?

(Objected to.)

(98) A. That is three stories.
Q. What about the height of the Mechanics Loan & Savings Institute Building?

(Objected to generally.)

A. Two stories, as I remember.
Q. How about the height of the ceilings of the present First National Bank?

(Objected to generally.)

A. I would say they are in and about as high as any of the banks in town, or a little higher.
Q. You are connected with several corporations, are you not?

(Objected to generally, and as leading.)

A. I am.
Q. How does the number of employes employed by the corporations with which you are connected compare with the number of employees employed by any other family or any other corporations in the county?

(Objected to generally.)

A. I would say that the number of our employees are greater than any other.

CROSS EXAMINATION.

By Col. C. A. LITTLE:

Q. Do you know the Hagerstown Brewery Company Building? A. Yes, sir.

Q. How many stories high is that? A. Partly a two story building and partly a four story building, as near as I remember. It is what I would call the brew house—including that, it would be four stories.

Q. What is the height of the Hotel Hamilton? A. Four stories—and a half, probably.

Q. What is the height of the Everly building? A. Five stories.

(99) Q. State whether or not the Everly Building and the First National Bank are in the same block? A. It would not be if the blocks were all alike in Hagerstown.

Q. Isn't it in the same block? A. Yes.

Q. Do you know anything about the building Mr. Moller is erecting on the corner of Antietam and Jonathan streets? A. Only what I have heard.

Q. About how far is the First National Bank Building from the Court House? A. Not more than 30 feet.

Q. How far is the First National Bank from the Second National Bank? A. 100 yards probably.

Q. How far is it from the Hagerstown Bank? A. About 70 yards.

Q. How far from the Mechanics Loan & Savings Institute? A. Probably 20 yards.

Q. How far is it from the Peoples National Bank? A. Six feet.

Q. How far from the City Savings Bank? A. 10 yards I suppose.

RE-EXAMINATION.

By Mr. H. F. WINGERT:

Q. What is the Everly Building used for? A. A department house or store room.

Q. How many stories does the Peoples National Bank occupy? A. One story.

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be

material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer. I do not know anything further.

LEWIS P. WINGERT.

(100) Personally appeared WILLIAM WINGERT, a witness of lawful age, being duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By H. F. WINGERT, Esq.:

Q. Where do you live and what is your business? A. I am now living at 118 Prospect street, Hagerstown, Maryland. I am an attorney by profession. I have practiced law since 1897. I am vice-president of the Hagerstown Furniture Company and take an active part in procuring business and buying the machinery; have secured some of the best business for the company, both in the United States and abroad. I organized, am president of, and financed the Hagerstown Silk Company, a corporation doing a large and prosperous business, much of which I secured by personal endeavor. I organized, built, am treasurer of and financed the Antietam Knitting Company, also doing a successful business. I am interested in several other smaller industries, one of which is known as the Hagerstown Carpet Company, and I intend in the near future to enlarge the same. I am a director in the Hagerstown Woodenware Mfg. Co. and have gotten a great deal of its business for it and take an active part in its management. I am a director in the Mutual Insurance Company of Washington County. The Wingert family is perhaps the largest holder of policies in that company. I am a member of the firm of E. A. Bostetter & Co., dry goods, Public Square, doing a successful business. I am one of the Philip Wingert heirs. The property of the Philip Wingert heirs consists of both real and personal property—four farms comprising about 650 acres of excellent land, properly cultivated and up to date improvements. The real property of the Wingert heirs in the town of Hagerstown consists of about 168 feet, beginning from the Public Square and running north along North Potomac street, improved with store rooms on the first floors and dwellings in the two stories above—all of which are three stories. On the Public Square the Philip
(101) Wingert heirs own two properties, the one having a frontage of about 40 feet and the other 33 feet, store rooms on the first floors, two stories above. The Philip Wingert heirs also own a block on North Potomac street and East Avenue, containing eight dwelling houses three stories high, equipped

with steam heat and gas, the steam furnished by the landlords. The Philip Wingert heirs also own a considerable lot and two houses on West Antietam street above the Western Maryland R. R., besides some smaller holdings in different parts of Washington County. The Wingert heirs own a residence on Prospect street of considerable value and a vacant lot of considerable value.

(Col. C. A. Little objects to all the testimony of Mr. William Wingert up to this point, except such portions thereof as are necessary for his proper identification and qualification as a witness.)

Q. Are you connected with the First National Bank of Hagerstown? A. I am a director of the First National Bank and own at least 356 shares of its stock, being the second largest individual holder in the Bank.

Q. How about the holdings of the Wingert family? A. The Wingert family owns about 1,200 shares of stock in this bank.

(Objected to generally.)

Q. How do the holdings of the Wingert family compare with the holdings of any other family or any other individual?

(Objected to generally.)

A. The Wingert family have at least 50% more stock than any one individual or family connected with the Bank.

Q. Either as a stockholder or director, do you mean? A. Either as a stockholder or director, in any way.

Q. State the capital stock of the bank and the number of shares? A. Capital stock $100,000; number of shares 10,000.

Q. Par value? A. $10.00.

Q. What was the price obtained for the last stock of the First National Bank sold at public sale? A. My recollection is that it was sold at $31.75 and purchased by my brother Lewis Wingert.

Q. Who are the directors of the First National Bank? (102) A. Isaac Ankeney, F. W. Mish, C. A. Little, W. D. Willson, J. G. Steffey, Francis Miller, Wolfgang Newcomer, C. M. Horst, Dr. Charles McCauley, John D. Newcomer and myself.

Q. Who is the present cashier of the Bank? A. Harvey H. Heyser.

Q. Who did he succeed? A. John D. Newcomer.

Q. When? A. Last January.

Q. How long was John D. Newcomer cashier of the First National Bank? A. Not less than 15 years, to my knowledge.

Q. State what you remember as to the conception and completion of plans and designs to tear down the present bank building of the First National Bank and erect in its stead a six story building?

(Objected to generally.)

A. The matter was first brought to my attention by Dr. McCauley, a director, at his home, sometime before Christmas, 1908. He mentioned the contemplated improvements and I told him I would have to be opposed to these improvements.

Q. Is it not a fact that the matter was broached once before that?

(Objected to generally.)

A. It had been mentioned a year before that by a Mr. Steffey, a director, at the Board meeting. I objected on the ground that it was not sufficient notice to liberally treat the parties then occupying the remainder of the building not used by the Bank. The matter passed over after that so far as I had any knowledge.

Q. State when, or about when, to the best of your knowledge, the directors of the Bank decided to tear down the First National Bank building and erect in its stead a six story office (103) building? A. I think it was a little before January, 1909, that the matter came up in the shape of a motion to determine to make improvements to the Bank. The motion was made by Mr. Isaac Ankeney.

Q. How much stock does Isaac Ankeney own? A. Ten shares, and had then only been a director for about one year. The motion was seconded by Mr. Wolfgang Newcomer, and as nearly as I remember, was voted on by only two of those present, the two had put and seconded the motion, everyone else remaining silent.

(Objected to.)

Q. Was the motion passed?

(Objected to generally.)

A. The motion was declared passed. Then early in January a special night meeting was held.

Q. Were all the directors present at this meeting? A. At this meeting W. D. Willson and Isaac Ankeney were ab-

sent, as nearly as I remember—I think I am correct—everyone else being present. At this meeting Mr. John D. Newcomer told me personally that he was opposed to tearing down and rebuilding the present Bank building.

(Objected to.)

Q. At the meeting? A. During the meeting. The matter was taken up and it was decided to tear down the present building and erect a six story building, Mr. John D. Newcomer voting with the majority; myself opposing both the tearing down and the erecting of a new building. And before the regular meeting the following Tuesday I asked that my opposition be noted on the records.

Q. Are you a man of means and have you had sufficient experience in the building and in the handling of real estate to make you a judge of all the points connected with the proposition proposed by the Bank?

(Objected to generally.)

A. I believe myself to be worth $150,000, at least, clear of all encumbrances. I have been building, with very slight interruptions, since the spring of 1896.

(Objected to.)

(104) Q. State what kind of buildings?

(Objected to generally.)

A. I superintended the construction of 13 dwelling houses. I have superintended and helped to construct six different factory buildings, none of which were less than four stories in height and 100 feet long. I have been continuously remodelling and improving real estate belonging to the Philip Wingert heirs. I am now building a four story factory building 112 x 50 feet, and have just recently completed a large and splendid building, occupied by the Antietam Knitting Company. I have a particular fondness for machinery and building and have watched constructions with great interest and care in many parts of the United States and Europe. I believe myself capable of judging both of the value and cost of such a building as the plans drawn for the First National Bank show, though I did not enter with great care into the cost of this building, being opposed to its construction.

Q. What do you consider it would cost to build this building?

(Objected to generally.)

A. It is my opinion, counting the well known difficulties of getting a secure foundation on West Washington street and it being known that the land underlying the present First National Bank building is of a similar character, to complete the building, giving the proper concrete bottom so as to keep out the water, and the contemplated fixtures in the Bank, bringing it strictly up to a finish, that building would not cost less than $75,000.

Q. How about the cost of the equipment? Would that include the equipment?

(Objected to generally.)

A. With the equipment—

Q. Did the destruction of the present bank building include the destruction of the present bank vault? A. The present plans include the tearing out of the present vault. If exceptionally fine equipment were placed in the nature of a (105) vault and furniture, it will cost at least $5,000 more—may be $10,000 more. My experience has been that all buildings cost considerably more than contemplated.

(Objected to generally.)

Q. What about the physical condition of the present bank building, inside and outside? A. The present bank building, inside and outside, is in splendid physical condition. I personally examined it from roof to basement. The roof would last for many, many years with proper care; the walls are perfect; the frontage is of compressed brick with marble trimmings, both of which are practically indestructible.

Q. What about the interior condition? A. In the interior the walls are in perfect condition except some finishing in the nature of wainscoting, papering, upholstering, or something of that sort; otherwise no better walls can be found.

Q. How about the height of the ceiling? A. The height of the ceiling in all rooms is unusually good.

Q. Modern conveniences? A. Modern conveniences throughout. These can be improved on with very little cost.

Q. Mention what they would consist of? A. The Bank has electricity in it, water and gas, toilet arrangements, steam heat—splendid system. The part formerly occupied as a boarding house has sufficient toilet accommodations, gas and partially installed with electricity. The rooms are nearly all commodious and with the exception of papering, are as good as if made new.

Q. What about the frontage of the lot—give the dimensions of the lot? A. The frontage of the lot is probably a little less than 41 feet.

Q. Its depth? A. The depth is 240 feet.

Q. The adjoining properties? A. On the east it is adjoined by the Kausler property, which is a two story building.

(106) Q. Is it modern in structure?

(Objected to generally.)

A. An old structure with modern accommodations.

Q. An old stone house? A. Yes, an old stone house with modern accommodations.

Q. How high is the building next to the Kausler property?

(Objected to generally.)

A. That is also a two story building. I have never been inside of the dwelling portion of it.

Q. What adjoins the Bank on the west? A. A 12 foot alley, after which is the Hotel Hamilton.

Q. Is it possible, without tearing down the present bank building, to modify it and change it in such a way as to give the Bank all the room and light and accommodations necessary for the transaction of its business? A. It is entirely possible and, in my judgment, the only improvement that should be made.

Q. What is the frontage of the building and the depth of it? A. The frontage of the present building is 39 ft. 6 in. and has a depth of about 50 ft. in the bank building; there is adjoining it and over against the Kausler lot an additional building about 40 ft. long and 16 ft. wide.

Q. Are there any buildings in the way of extending the present bank building on the lot? A. The present bank building can be extended back on the lot to amply accommodate many times the volume of business now done by the bank without in any way tearing down or interfering with buildings now on the rear.

Q. The rear of the lot is practically unimproved, is it not? A. The extreme rear of the lot has a tumble-down brick stable on it.

Q. Otherwise it is unimproved? A. Otherwise it is unimproved.

(107) Q. Is it not a fact that there are two trees nearly the height of two stories in front of the bank building to obstruct the light?

(Objected to generally.)

A. There are two trees standing in front of the Bank which obstruct the light when in leaf. The cutting away of

these trees has been advocated at various times by Dr. McCauley.

Q. Are you interested in and are you acquainted with any of the other banks of Hagerstown?

(Objected to generally.)

A. I am a stockholder in the Hagerstown Bank in my own name to a considerable value and have large family rights, being an heir of Philip Wingert.

Q. How does the Hagerstown Bank, in wealth and in age, compare with the other banks of Hagerstown?

(Objected to generally.)

A. The Hagerstown Bank is the oldest Bank in Hagerstown and next oldest in the County, the Bank of Williamsport being the oldest. It is the wealthiest Bank in Washington County.

Q. State what you know about the physical structure of the Bank building of the Hagerstown Bank?

(Objected to generally.)

A. The bank building is two stories high and has two wings one story high.

Q. Which was built first, the main building or the wings?

(Objected to generally.)

A. The main building was built first.

Q. Do you know how long the main building has been built?

(Objected to generally.)

A. I believe over 100 years, I am not certain.

Q. How long have the wings been built?

(Objected to generally.)

A. The wings have been built less than five years.

Q. What about the frontage of the lot of the Hagerstown Bank?

(Objected to generally.)

A. It probably has a frontage of 82 feet; it may be a little more.

(108) Q. What adjoins it on the east?

(Objected to as irrelevant.)

A. On the east by a public alley.

Q. On the west?

(Objected to as irrelevant.)

A. On the west is the Updegraff property.

Q. Is there a space between? A. There is a light space between.

Q. Do you, or not, know that the Hagerstown Bank recently spent considerable money in improving and remodelling its main bank building?

(Objected to as irrelevant.)

A. I know that the Hagerstown Bank recently spent a considerable sum of money in remodelling its building.

Q. Is it not a fact also that the employees of the Hagerstown Bank work largely by artificial light?

(Objected to as leading and generally.)

A. Every time I have been in the Bank they had artificial light burning.

Q. Do you know the Second National Bank of Hagerstown?

(Objected to generally.)

A. Yes, I do some business with the Second National Bank.

Q. State the number of stories of its building?

(Objected to.)

A. A three story building.

Q. What about the interior condition of it?

(Objected to.)

A. I do not consider the interior condition of the banking room the equal of the present First National Banking rooms and accommodations.

Q. How do the accommodations of the Peoples Bank and the City Savings Bank compare with the accommodations of the First National Bank?

(Objected to generally.)

A. In so far as the customer is concerned, neither the Peoples Bank, the Mechanics Loan or the City Savings Bank have as good accommodations.

(109) Q. Will you include the Eavey, Lane Bank also? A. Yes, and the Eavey, Lane Bank. I do not consider that any one of them have more than half the physical accommodations in the banking room that the First National Bank now has. I do not consider the furniture equipment of any one of them better than those in the First National Bank. I believe the wood used in the construction of the accommodations in the First National Bank to be the equal of any of them except, possibly the Eavey, Lane Bank, which, if I remember correctly, is part mahogany.

Q. State the location of the Eavey, Lane Bank Building with reference to the First National Bank Building? A. It is directly opposite the First National Bank Building and is about five feet narrower on the front.

Q. How about its height? A. It is a three story building.

Q. All the way? A. In front, and two stories in the rear.

Q. State about the upper stories, what they are intended for? A. Offices. The first story is the bank.

Q. Are the offices in the upper stories of the Eavey, Lane Building at present occupied? A. There is only one office on the third floor occupied and on the second floor there are perhaps three or more vacant.

Q. Does the Peoples National Bank own its bank building?

(Objected to generally.)

A. The Peoples National Bank does not own its bank building.

Q. How about the City Savings Bank?

(Objected to generally.)

A. The City Savings Bank does not own its building. Both of these banks occupy only one floor.

Q. Did you attend a meeting of the directors of the First National Bank on March 16th, 1909? A. It was a regular meeting, as I remember it, and I attended it.

(110) Q. Did you stay there until you supposed all business before the meeting was transacted? A. I staid there until I supposed all the business was transacted.

Q. Was there submitted to the Board of Directors for their consideration at this meeting on March 16th, 1909, any answer of the First National Bank which it contemplated filing in these proceedings? A. There was not.

Q. Did you see or hear of any answer which the First National Bank contemplated filing in these proceedings until after it was filed in Baltimore? A. I did not.

Q. Were you notified of any special meeting to be held by the Directors of the First National Bank on March 16th, 1909? A. I was not.

Q. Was the matter of authorizing F. W. Mish, president of the Bank, to sign the answer filed in this cause and to make the affidavit thereto, at any time submitted to you for your consideration? A. It was not at any time, either at a regular or special meeting.

Q. Did you hear read at any meeting of the Board of Directors a letter addressed to the Board of Directors by Lewis P. Wingert and filed in this cause as "Exhibit L. P. W."? A. I did.

Q. Since you have been in business have you had important business relations with the First National Bank?

(Objected to generally.)

A. I have continuously, since and before I was in business, been transacting business and important business with the First National Bank.

Q. Where does the president of this Bank have his private offices?

(Objected to generally.)

A. The president of this Bank seems to have his private office in the Bank building, in the Directors' room.

Q. Where was the office of Frank W. Mish before he was elected president of this Bank?

(Objected to generally.)

(111) A. Mealey Row, W. Washington St.

Q. Did Mr. Mish ever apply to the Board of Directors, in your presence, for permission to move his private office from Mealey's Row into the Directors Room of the First National Bank?

(Objected to generally.)

A. He did not.

Q. I forgot to ask you if you know about how old the First National Bank Building is? A. According to the latest history of Washington County, it was built in 1882.

Q. Have you had considerable experience in the renting of properties for business purposes in this town?

(Objected to as irrelevant.)

A. I have.

Q. And is it as a result of that experience that you have opposed the tearing down of the present Bank Building and the erecting of a six story office building?

(Objected to as leading and generally.)

A. It is partially the result of my experience as a landlord that I object to this.

Q. The business property belonging to Philip Wingert's heirs in the business portion of Hagerstown is on Potomac street and mentioned by Mr. Oswald in his testimony as being the business center of the town; is that a fact?

(Objected to as to form and as leading and generally.)

A. The business property owned by Philip Wingert's heirs on the Public Square and North Potomac street is within the bounds mentioned by Mr. Oswald as being the business center of Hagerstown.

Q. What is the value of the present bank building, bank vault and equipment of the First National Bank? A. I believe the value of the present Bank Building, its vault and equipments to be worth not less than $30,000.

Q. Did anyone apply to you, representing the Bank, or (112) anyone else, for your consent in writing to the tearing down of the present building and the erection of a six story building in its stead?

(Objected to.)

A. They did not.

Q. Do you know if F. W. Mish, president of the Bank, owns any property at all in the heart of Hagerstown?

(Objected to.)

A. I do not know of his owning any property in the heart of the town.

Q. Is he a man of large means?

(Objected to.)

A. He is.

Q. Do you know if Dr. Charles McCauley owns any business property in the business center of the town?

(Objected to.)

A. I do not know.

Q. Does Dr. Charles McCauley own any property in the business center of the town?

(Objected to as irrelevant.)

A. He does not to the best of my knowledge.

Q. Have either of them owned any business property in the business section of the town in your day?

(Objected to generally.)

A. They have not, to my knowledge.

Q. Have they ever had charge of or rented any as agents?

(Objected to as irrelevant and generally.)

A. Not to my knowledge.

Q. Do any of the following directors,—Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Wolfgang Newcomer, John D. Newcomer, J. Grason Steffey—own any business property in the business center of Hagerstown, and have any of them owned any in your day?

(Objected to as irrelevant.)

A. They do not and have not in my day owned any business property in the business center of Hagerstown, to my knowledge.

Q. How many shares of stock in the First National Bank does Isaac Ankeney own?

(Objected to.)

(113) A. 10 shares.

Q. John D. Newcomer?

(Objected to.)

A. 10 shares.

Q. Walter D. Willson?

(Objected to.)

A. 10 shares.

Q. Christian M. Horst?

(Objected to.)

A. 19 shares.

Q. Charles A. Little?

(Objected to.)

A. To the best of my knowledge, 25 shares.

Q. How many directors are there in the First National Bank? A. 11 Directors.

Q. The president is one of the directors, is he not? A. Yes, he is one of the directors.

CROSS EXAMINATION.

By Col. C. A. LITTLE:

Q. You have stated that you were not approached by Mr. F. W. Mish, president of the Bank, for the purpose of getting your written consent to the improvements contemplated; you knew those improvements were contemplated, did you not? A. Yes, I knew it.

Q. At the meeting of the Board of Directors of the Bank had you not stated your objection to the whole scheme and put yourself on record as being opposed to it? A. I did.

Q. Did you assign to the Board at its meeting any specific reasons why you were opposed to the contemplated improvements? A. I assigned many reasons.

Q. Did you ever state, at the meeting of the Board at any time, that in your opinion the improvements ought to be delayed until additional property could be secured and improvements made on a more extensive scale than those suggested?

(Objected to.)

(114) A. I think I did state that.

Q. Was that one of the reasons why you opposed such improvements? A. That was one of the many objections.

Q. You stated that you were interested in, managed and superintended the construction of a number of factory buildings and that you were interested in a number of factories; state where those factories are located? A. Three of these factories are in Hagerstown and two of them just outside of Hagerstown.

Q. How far outside of the corporate limits of Hagerstown are the last two mentioned? A. One is just across the street and the other one is a few hundred feet from the present corporation limits.

Q. You stated you were present at the special meeting held at night at the First National Bank, when the Board of Directors determined to make these improvements; how did the directors at that meeting vote on the proposition as to whether the improvements as contemplated should be made or not? A.

They all favored it except myself—I mean that all of those present voted in favor of it except myself.

Q. Did the Board of Directors, at any of its meetings, ever take any action with reference to the suit pending against the Bank in the United States Court? A. They did.

Q. When was it? A. I think it was on March 16th, 1909.

Q. State what action, if any, was taken?

(Objected to by Mr. Neill, unless minutes of meeting are produced.)

A. The original motion was to give Col. Little, the attorney for the Bank power to employ counsel, and some one, as near as I remember it, by word of mouth added "to make such defense as the Bank deems necessary." That is as near as I can come to it.

(115) Q. Do you recall whether or not that resolution carried? A. That was assented to. I do not know that it was put in the form of a motion, but that was assented to.

Q. Did you vote on the resolution? A. I did not vote.

Q. Neither for nor against? A. Neither for nor against.

Q. State whether or not there is an elevator in the Eavey, Lane Bank Building?

(Objected to.)

A. There is no elevator in the Eavey, Lane Building.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer. I do not know anything further.

WILLIAM WINGERT.

Personally appeared RUFUS HAYS, a witness of lawful age, being duly sworn, did depose and say:

DIRECT EXAMINATION.

By Mr. H. F. WINGERT:

Q. State where you live? A. In Hagerstown, Md.

Q. What is your occupation? A. A merchant.

Q. State more specifically what your particular business is? A. Books, wall paper, windowshades. And I am a director of the Mechanics Loan & Savings Institute.

Q. How long have you been in business as proprietor and employee? A. Since 1870.

Q. Do you, in connection with your brothers or individually, own a lot on West Washington street? A. We do.

Q. State where it is and the surrounding property? A. The next property east from the Baldwin House, on the north side of West Washington street, with an alley between.

(116) Q. How wide is the alley? A. I suppose about 12 feet, something like that.

Q. Who adjoins you on the other side? A. Charles Everly.

Q. A little more specifically, the property that adjoins you? A. A two story building used for a restaurant.

Q. What are the dimensions of your lot? A. 125 x 39 ft. front.

Q. You contemplate building, do you not? A. We are building on this lot now.

Q. I forgot to ask you where you have been in business since 1870? A. In the same property—on this same lot.

Q. You stated that you and your brothers own the lot? A. Yes.

Q. What are the dimensions of the building you are constructing?

(Objected to.)

A. It will cover this lot, 39 x 125.

Q. How many stories is it to be?

(Objected to.)

A. Three stories.

Q. The plans are already drawn, are they, and accepted?

(Objected to.)

A. Yes, sir.

Q. How many persons constitute the owners of this lot?

(Objected to.)

A. Three.

Q. Yourself and two brothers? A. Yes, sir.

Q. Did you and your brothers at any time consider the matter of building a building more than three stories on your lot there?

(Objected to.)

A. No, sir.

Q. How is your lot situated with reference to the Hagerstown Bank?

(Objected to.)

A. Do you mean location?

(117) Q. Yes. A. It is northeast.

Q. Diagonally across the street? A. Yes, on the opposite side, northeast.

Q. How far are you from the Everly department store? A. 29 feet from it.

Q. And you own other valuable property in the heart of the town, do you not, or have an interest in it?

(Objected to.)

A. The nearest to it would be South Potomac street property, opposite the Post Office.

Q. Anything else? A. And on West Antietam street.

Q. In the same block as the South Potomac street property? A. Yes, sir.

Q. Do you rent it out to tenants? A. Yes, sir.

Q. Is the location of your lot and the building that is to be erected thereon as well located with reference to the business of the town as the First National Bank of Hagerstown?

(Objected to generally.)

A. That is a hard question to answer. If I was at the First National Bank property I would think it would be better than where we are now, if the Bank was down there. I think the First National Bank's location is good, fine, and I think that all along that street is good, along West Washington street on that side and on the other side too, for that matter.

Q. Do you consider your location as good as the location of the First National Bank for general business purposes?

(Objected to generally.)

A. I think it is as good.

Q. Do you know of any three story building in Hagerstown that has an elevator in it? A. No, I do not know of any, but ours will have two elevators in it, a freight and a passenger.

CROSS EXAMINATION.

By Col. C. A. LITTLE:

(118) Q. Do you know the First National Bank lot? A. I do.

Q. Are you conversant with the values of property along on West Washington street? A. Yes, sir.

Q. State what, in your opinion, the First National Bank lot, without the building, would be worth?

(Objected to by Mr. Neill.)

A. From $30,000 to $40,000.

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

RUFUS M. HAYS.

Personally appeared OWEN D. SHERLEY, a witness of lawful age, produced on behalf of the plaintiff, being duly sworn, did depose and say:

DIRECT EXAMINATION.

By Mr. H. F. WINGERT:

Q. State where you live? A. 127 E. Franklin St., Hagerstown, Maryland.

Q. What is your occupation? A. I am a general contractor and builder.

Q. How long have you been contracting in Hagerstown? A. 12 years.

Q. Do you know the First National Bank of Hagerstown? A. I know where it is, yes.

Q. Have you ever been inside of it? A. Yes, I have been inside of it.

Q. State whether or not it would be possible to take the whole front out of the First National Bank building and put a girder in and put all glass in the front?

(Objected to generally.)

A. Do you mean the whole front to the roof?

(119) Q. No, just the first story, so as to give light to the Bank? A. It is possible to do it.

Q. Is it also possible to put a girder in the sides—to take the whole side out of the first story and let all the light in that you would want?

(Objected to.)

A. Yes.

Q. Are you acquainted with the lot in the rear of the Bank? A. I know it clear down to the alley.

Q. From your knowledge and experience as a contractor, would it be possible to give the First National Bank all the room and accommodations necessary for their banking business without tearing down the present three story bank building, to putting additions thereto, etc.?

(Objected to.)

A. That would depend on how much room was required.

Q. From your knowledge, would it be possible? A. It would, so far as what I know of the room that would be required. I would think so, yes.

Q. Would it be possible to take the partition wall out that is now between the banking room and the directors room and throw it all into one room without tearing down the building?

(Objected to.)

A. Yes, it is possible to do that.

Q. What do you know about the condition of the interior part of the First National Bank as compared with the interior of the Peoples National Bank and the Second National Bank and the City Savings Bank of Hagerstown?

(Objected to.)

A. It is fully as good and much lighter, I think.

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage

to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

OWEN D. SHERLEY.

(120) Personally appeared SYLVESTER YOUNG, a witness of lawful age, being duly sworn, did depose and say:

DIRECT EXAMINATION.

By H. F. WINGERT:

Q. Where do you live and what is your business? A. I live at 32 E. Lee St., Hagerstown, Md. My business is that of a real estate agent.

Q. How long have you been in this business? A. Something over three years.

Q. Are you acquainted with real estate conditions in Hagerstown? A. I think so, yes.

Q. Are there any six story buildings in Hagerstown at the present time?

(Objected to.)

A. Not that I know of.

Q. Are there any five story buildings in Hagerstown at the present time?

(Objected to.)

A. I think the Eyerly building is a five story building.

Q. For what is the Eyerly building used? A. A department store.

Q. Do you know the First National Bank building of Hagerstown? A. Yes, sir.

Q. And the lot of ground behind it? A. I do not know much about the ground.

Q. What is the height of the First National Bank Building? A. I do not know if it is three or four stories. I never noticed it closely.

Q. Do you know the Eavey, Lane Bank Building?

(Objected to.)

A. Yes, sir.

Q. Do you know how many stories it is?

(Objected to generally.)

A. Three stories.

(121) Q. How is the Eavey, Lane Building located with reference to the First National Bank? A. It is about opposite on the same street.

Q. Do you know the Second National Bank building and how high it is?

(Objected to generally.)

A. Three stories.

Q. Do you know the Hagerstown Bank Building and how high it is?

(Objected to generally.)

A. Yes, two stories.

Q. Are there any additions to the Hagerstown Bank that are less than two stories?

(Objected to.)

A. I do not know. I never noticed that part of it. Yes, I did, too; there is a wing there that is only one story.

Q. How does the site of the Hagerstown Bank compare in importance with the site of the First National Bank? Is it as good, better, or not so good?

(Objected to.)

A. For banking purposes, do you mean?

Q. Yes. A. I think it is equally as good.

Q. What is the height of the Mechanics Loan & Savings Institute building?

(Objected to generally.)

A. Three stories.

Q. Do you have an office in Hagerstown? A. Yes, sir.

Q. State where it is? A. Above these offices here—the Mealey Row, S. Jonathan St.

Q. How long have you occupied this office? A. Since, I think, about the first of January, 1909.

Q. Is Mealey's Row a good location for offices?

(Objected to.)

A. I don't think there is any better.

(122) Q. When you rented your present office, was it occupied by anyone?

(Objected to.)

A. No, sir.

Q. Do you know how long it had been vacant before you rented it?

(Objected to.)

A. It had been vacant for quite a while, I do not know just how long, a year or more. I think the one office had been vacant for a couple of years, I think from the time Mr. Edmonds died.

(Objected to.)

Q. State what floor you are on? A. Second floor.
Q. Is that office a single or a double office?

(Objected to.)

A. A double office.
Q. Both offices were vacant when you rented them, were they?

(Objected to.)

A. Yes.
Q. How are the stairs leading to your office? How is it located with reference to the entrance?

(Objected to.)

A. The first office at the top of the stairs.
Q. Are the stairs easy or difficult to climb?

(Objected to.)

A. Easy.
Q. Do you know the McComas building on West Washington street next to the Baldwin Hotel on the west? A. Yes, sir.
Q. Are you acquainted with the offices in that building? A. Yes, sir.
Q. What is the height of that building?

(Objected to.)

A. Three stories.
Q. Do you know if there are any vacant rooms in that building at the present time?

(Objected to.)

A. Two rooms on the second floor.

(123) Q. Are they desirable?

(Objected to.)

A. I count them desirable, yes.

Q. Are they front or back rooms? A. One is in front and the other in the rear.

### Cross Examination.

By Col. C. A. Little:

Q. How long have you been in the real estate business? A. Something over three years actively. About ten years passively. I have done a little business for about ten years, but only actively for about three years.

Q. What opportunities have you had in the last three years of knowing or learning the values of real estate in Hagerstown? A. During that time I have made about 150 sales and of course observed other sales that have been made.

Q. Are you conversant with the values of real estate on West Washington street in Hagerstown? In the vicinity of the Court House? A. Somewhat, yes.

Q. Do you know the First National Bank lot opposite the Eavey, Lane Bank Building? A. I know the building but I do not know anything about the lot, in the rear. I was in the rear outside of the door but I did not pay particular attention to it. That was the day of the sale at the hotel.

Q. You know its location? A. Yes, sir.

Q. If that lot has a frontage of 41 feet on West Washington street and runs back 240 feet to an alley, what, in your judgment, would that lot be worth without the building on it? A. I should judge that lot would be worth about $40,000.

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

SYLVESTER L. V. YOUNG.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, and others. } In Equity.

(124) On Monday, April 19, 1909, at Hagerstown, Maryland, the taking of testimony on behalf of the complainant in the above entitled cause, before Alexander R. Hagner, U. S. Commissioner for the district of Maryland, was continued as follows:

Personally appeared S. M. BLOOM, a witness of lawful age, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By H. F. WINGERT, Esq.:

Q. Where do you live and what is your business? A. I reside in Hagerstown, Maryland. I am in the wholesale grocery and notion business.

Q. How long have you been in business in Hagerstown? A. I opened store in 1865.

Q. Were you ever president of the First National Bank? If so, when and how long? A. Yes, I think about 17½ years.

Q. From when to what time? A. I started in 1889 and went out last spring a year ago.

Q. What was the surplus of the Bank, if any, when you (125) took charge of it? A. I think it was $30,000.

Q. What was the surplus of the Bank when you left as president? A. It was over $120,000, I believe, surplus and undivided profits.

Q. Did you make any changes or improvements to the Bank building whilst you were president?

(Objected to.)

A. We put in some partitions and painted it several times, improved the back yard, filled it up a couple of feet and paved it with brick. We were bothered with several cesspools and we had them put in good order. And we made changes in the banking room and cemented part of the cellar, which was very much improved.

Q. When you left the Bank as president did you consider the banking room and directors room sufficient to meet the needs and requirements of the Bank in its business?

(Objected to as leading and generally.)

A. As to whether I consider it ample?
Q. Yes. A. I did.
Q. Did you at any time while you were president think of tearing down and destroying the present bank building and of erecting a six story office building in its stead?

(Objected to.)

A. No, sir, it never was discussed.

CROSS EXAMINATION.

By Col. C. A. LITTLE:

Q. What, in your opinion, is the value of the lot on which the bank stands, without the building?

(Objected to.)

(126) A. It ought to sell for $35,000.

RE-DIRECT EXAMINATION.

By H. F. WINGERT, Esq.:

Q. What do you consider the value of the present Bank building, furniture and other equipment to be? A. As it stands there?
Q. Yes.

(To COMMISSIONER)

A. I must answer that question, must I?

COMMISSIONER: Yes, to the best of your ability.

A. You know, my friends, I have nothing in this world in my testimony—

COMMISSIONER: Answer the question and explain afterwards.

A. I should think that the public sale price of that property to-day as it stands there—

COMMISSIONER: Not the land.

A. To put the building there in the present condition. This is a well built house by Robert Thornsburg; there is nothing scanty about it. It would cost to-day $20,000 to put that building there.

Q. Does that include the furniture and the vault? A. They are not much; that will take it all.

Q. Have you sold the stock that you held in the Bank? A. Yes, sir.

RE-CROSS EXAMINATION.

By Col. C. A. LITTLE:

Q. Did you sell this stock before or after you heard these contemplated improvements? A. Very much before. It was not for any fear, however, that I sold it but I could use my money to better advantage than 3%.
(127)

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

S. M. BLOOM.

Personally appeared JOSEPH KAUSLER, a witness of lawful age, being duly sworn, did depose and say:

DIRECT EXAMINATION.

By H. F. WINGERT, Esq.:

Q. Where do you live? A. 43 Wayside Ave., Hagerstown, Md.

Q. About how long have you lived in Hagerstown? A. Pretty near all my life, born here.

Q. Were you ever connected with the Hagerstown Bank? A. I was.

Q. State in what capacity you were connected with it and how long? A. First clerk, then teller, then cashier.

Q. Covering how many years? A. Twenty-one.

Q. How long were you cashier of the Hagerstown Bank? A. 17 years.

(Witness is here shown two picture postal cards marked "Exhibit 1 and 2," respectively.)

Q. Do you recognize the building? A. Yes, as it is now; yes.

(128) Q. Is that the Hagerstown Bank?

(Objected to as leading.)

A. It looks like it to me.

Q. Do you remember when the main building, in the center of the picture, was built.?

(Objected to.)

A. I do not remember, because I was not born when the original bank was built. Statistics say in 1814.

Q. Do you know the frontage of the lot on which it stands?

(Objected to.)

A. 82 feet fronting on West Washington street.

Q. State where this lot and building of the Hagerstown Bank is located?

(Objected to.)

A. Opposite the Baldwin House, between the alley on W. Washington street and the Updegraff building.

Q. Do you remember about when the two wings on each side of the main building were built?

A. I can not just recollect, but a few years back; I can not recollect positively.

Q. Are those wings one or two stories?

(Objected to.)

A. I think they are one story; that is my impression.

Q. Have any improvements, to your knowledge, been made to the interior part of the main building of the Hagerstown Bank in recent years?

(Objected to.)

A. Yes, sir.

Q. State about what they consist of?

(Objected to.)

(129) A. The whole thing has been altered inside.

Q. Was the outside of the building itself, the main structure of the building altered? A. Just those two wings.

Q. Have you any idea about what the interior improvements which were made recently cost?

(Objected to.)

A. No, sir.

Q. What about the age of the Hagerstown Bank as an institution?

(Objected to.)

A. It was chartered as a bank, in, I think, in 1806.

Q. How does it compare with the age of other banking institutions in Hagerstown?

(Objected to.)

A. That was the only Bank at that time. The First National Bank was the next Bank.

Q. About what are the total assets of the Hagerstown Bank according to its published statements at the present time?

(Objected to.)

A. I can not tell you.

Q. How does the location of the Hagerstown Bank for banking purposes compared with the location of the First National Bank? Is it as good, or better?

(Objected to.)

A. Any body with any sense will say that the Hagerstown Bank has the best position in town.

(Exhibits 1 and 2, which were shown witness and identified as pictures of the Hagerstown Bank in Hagerstown, Maryland, are herewith filed as part of this deposition.)

(Objected to.)

(130)

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage

to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

JOSEPH KAUSLER.

Personally appeared ANDREW J. SCHINDEL, a witness of lawful age, being duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By H. F. WINGERT, Esq.:

Q. Where do you live? A. At the Baldwin Hotel on West Washington street in Hagerstown, Maryland.

Q. About how long have you lived in Hagerstown? A. About 65 years.

Q. How long have you known the Hagerstown Bank?

(Objected to.)

A. Ever since I have been here.

("Exhibits 1 and 2 are here shown witness.)

Q. Do you recognize that building?

(Objected to.)

A. Yes, sir.

Q. How long do you remember of the main two story building in the center of the picture?

(Objected to.)

A. Ever since I have been in town. I could not help but
(131) see that, passing it every day.

Q. Do you remember when the wings were built?

(Objected to.)

A. I can not recollect, but several years ago.

Q. They are only one story, are they not?

(Objected to.)

A. Yes.

Q. Do you remember that extensive improvements were made to the interior of the main or central building of the Hagerstown Bank recently?

(Objected to.)

A. Yes.

Q. Do you have an idea about what they may have cost?

(Objected to.)

A. No, indeed.

Q. The improvements in the interior of the building were made without tearing down in any way the main building, were they?

(Objected to.)

A. Yes, sir.

Q. What about the age and relative importance of the Hagerstown Bank compared with the other Banks in Hagerstown?

(Objected to.)

A. It was always looked up to as being the main Bank in Hagerstown ever since I knew it.

Q. What is its age?

(Objected to.)

A. I only know by report.

(132) Q. Give what that is with reference to the other banks, as to being older or not so old?

(Objected to.)

A. It is the oldest Bank in town.

Q. What about the value of the location of the Hagerstown Bank as a banking institution, compared with the location of the First National Bank? Is the location of the Hagerstown Bank as good or better than the location of the First National Bank?

(Objected to.)

A. I think it is better, the best in town, it strikes me. But the location of the First National Bank is just as good; there is only a few steps between the *tow*.

Q. Do you own any stock in the First National Bank?

A. No, sir, I never did.

CROSS EXAMINATION.

By Col. C. A. LITTLE:

Q. Do you own any stock in the Hagerstown Bank? A. Yes, sir.

Q. How much? A. 100 shares.

Q. Did the improvements of which you spoke, recently made to the Hagerstown Bank, add to or detract from the bank building as a banking institution? A. In a way it did not, and in another way it did. So far as the light is concerned it is the worst improvement made.

Q. Is it as good a banking building now as it was before the improvements were made? A. No, sir, not so far as light is concerned.

(133) Q. What, in your opinion would be value of the First National Bank lot without the building on it? A. I do not think you could buy that at public sale under the hammer under $25,000.

Q. You have lived in Hagerstown for 65 years? A. Yes, sir.

Q. Do you remember when the First National Bank building was put up? A. I remember when it was put up but I can not tell you the year.

Q. About how many years ago? A. I could not tell you. I have a poor recollection as to dates. I remember very well when it was built.

Q. Is it as much as 30 years old? A. Yes, I would think so, perhaps older.

Q. Do you know whether any improvements were made to the outside of the First National Bank, or any changes in the building since its original construction. A. I think there were some changes made, to my recollection, in the interior.

Q. I mean on the outside? A. Not that I recollect of.

Q. Do you know whether any changes were made in the interior? A. I think there were so far as the vaults are concerned.

Q. Do you know the extent of that improvement? A. I do not.

Q. Or when it was made? A. No, sir, I can not tell you.

RE-DIRECT EXAMINATION.

By H. F. WINGERT, Esq.:

Q. Have you in your day been owner of any real estate on West Washington street in the neighborhood, or anywhere near the Hagerstown Bank or the First National Bank?

(Objected to.)

A. Yes, I was, and unfortunately sold too soon.

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

A. J. SCHINDEL.

Personally appeared WILLIAM H. TICE, a witness of lawful age, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By H. F. WINGERT, Esq.:

Q. Where do you live? A. 440 N. Potomac St., Hagerstown, Md.

Q. What is your occupation? A. I am a farmer on a small scale.

Q. Have you been in any other occupation in your lifetime? A. I was at one time in the hardware business.

Q. Where? A. On West Washington street, in Hagerstown, Md.

(135) Q. How long were you in the hardware business on West Washington Street? A. 20 years.

Q. Was your hardware store anywhere near the Hagerstown Bank?

(Objected to.)

A. Yes, sir.

Q. State where? A. My hardware store was on one side of the alley running north and south between Washington and Antietam Streets and the Hagerstown Bank is on the opposite side of the alley.

(Witness is here shown "Exhibit 1 and 2.")

Q. Do you recognize the building thereon? Is that the Hagerstown Bank?

(Objected to.)

A. Yes.

Q. Do you remember when the two story building in the center of the picture was built?

(Objected to.)

A. I do not. I never heard.

Q. Do you remember about when the one story wings on either side were built?

(Objected to.)

A. I think they were built four or five years ago.

Q. What is the frontage of the Hagerstown Bank lot?

(Objected to.)

A. I do not have the precise width.

Q. Does the present Bank building cover the full width of the lot?

(Objected to.)

(136) A. It does not.

Q. Is there vacant space on either side of the building?

(Objected to.)

A. There is.

Q. Do you know whether or not improvements have been made recently in the interior of the main two story building of the Hagerstown Bank?

(Objected to.)

A. I do.

Q. Were they extensive?

(Objected to.)

A. I think so.

Q. What about the value of the location of the Hagerstown Bank as a banking institution compared with the location of the First National Bank of Hagerstown? Is it as good or better?

(Objected to.)

A. I consider the location of the Hagerstown Bank better.

Q. Do you know what the regular published reports of the Hagerstown Bank show to be the total assets of said Bank?

(Objected to generally and specially, because that is not the way to prove the assets of the Bank.)

A. I do not.

Q. At what value is the real estate of the Hagerstown Bank in Hagerstown carried on the books of said Bank?

(Objected to generally and because it is not the best evidence that can *not* be produced of valuation.)

A. $10,000.

CROSS EXAMINATION.

By Col C. A. LITTLE:

(137)

Q. Are you a stockholder in the Hagerstown Bank? A. I am.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

WILLIAM H. TICE.

Mr. JOSEPH KAUSLER re-called by complainant.

DIRECT EXAMINATION.

By Mr. WINGERT:

Q. At what value is the real esate of the Hagerstown Bank in Hagerstown carried on the books of said Bank?

(Objected to.)

A. $10,000.

RE-CROSS EXAMINATION.

By Col. LITTLE:

Q. State whether or not you are a stockholder in the Hagerstown Bank? A. I am.

Q. What is the amount of your holdings? A. I do not propose to answer that question; that is none of your business.

Q. I insist upon the question being answered. A. I do (138) not see why I should say how much stock I have. I am a stockholder.

By the COMMISSIONER: He says he wants to know the amount of your holdings? A. 400 shares.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

JOSEPH KAUSLER.

Personally appeared JOHN D. NEWCOMER, a witness of lawful age, after being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By H. F. WINGERT, Esq.:

Q. Where do you live? A. On East Ave., Hagerstown, Md.

Q. How long have you been living in Hagerstown or in Washington County? A. Something like 43 years in Hagerstown.

Q. What is your occupation? A. Clerk in the First National Bank.

Q. Are you in any other way officially connected with the Bank? A. I am Vice-President.

(139) Q. Do you own any stock in the First National Bank? A. Yes.

Q. Were you in any way connected with the First National Bank before you became Clerk? A. Yes.

Q. Just state in what capacity? A. Cashier.

Q. For how many years were you cashier of the First National Bank? A. About 15 or 20 years, I suppose.

Q. Is the First National Bank at the present time in a prosperous condition? A. Yes, sir.

Q. Do you remember about what was the surplus, and state, as near as you can remember, what was the surplus of the First National Bank when you first became employed by it as cashier? A. About $50,000.

Q. What is it at the present? A. $100,000.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

J. D. NEWCOMER.

Counsel for defendant reserves the right to call Mr. Newcomer as a witness for the defendant.

Personally appeared CLAGGETT D. SPANGLER, a witness of lawful age, being duly sworn, did depose and say as fol-
(140) lows:

DIRECT EXAMINATION.

By H. F. WINGERT:

Q. Where do you reside? A. N. Potomac St., Hagerstown, Md.

Q. How long have you lived in Hagerstown and in Washington County? A. All my life.

Q. What is your occupation? A. I am a painter, commonly called an artist.

Q. Do you have a place of business in Hagerstown? A. Yes, I have a room in the Eavey, Lane, or Maryland Trust Company Building, next to the Court House.

Q. Do you know if the Eavey, Lane, or Maryland Trust Company is a National Bank?

(Objected to.)

A. No, sir, I do not.

Q. How many stories are there to the Eavey, Lane or Maryland Trust Company Building?

(Objected to.)

A. The front, or main building, is three stories and the back building I believe is only two stories.

Q. Where is the Eavey, Lane Building or the Maryland Trust Company Building situated with reference to the First National Bank Building? A. Just across the Street.

Q. On what floor of the Eavey, Lane & Company building, or the Maryland Trust Company building, do you have your office? A. On the third floor.

(141) Q. How long have you had your office or room on the third floor of the Eavey, Lane & Company building or the Maryland Trust Company building?

(Objected to.)

A. About 16 years.

Q. State as near as you can how many offices or rooms are on the third floor of the Eavey, Lane & Company, or Maryland Trust Company building?

(Objected to.)

A. Six rooms.

Q. How many of them are occupied at the present time and how many are vacant?

(Objected to.)

A. I think three are occupied and apparently three are vacant; I do not know positively.

Q. Is it, or is it not a fact, that until recently the room occupied by Frank J. Gabriel, who died a couple of years ago, has been vacant, and that it has been vacant since his death until recently?

(Objected to.)

A. It was apparently vacant until sometime about Christmas time.

Q. About how long had it been vacant to the best of your recollection?

(Objected to.)

A. I do not know how long, but it seems to me six or eight months, perhaps. I can not say positively.

CROSS EXAMINATION.

(142)
By Col C. A. LITTLE:

Q. State whether or not there is an elevator in the Eavey, Lane building?

(Objected to.)

A. There is not.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

C. D. SPANGLER.

Personally appeared MILTON KOHLER, a witness of lawful age, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By H. F. WINGERT, Esq.:

Q. State where you live and what is your occupation? A. I reside at 421 N. Potomac Street, Hagerstown, Maryland, and I am in the jewelry business at 19 W. Washington Street.

Q. Who owns the building in which you are conducting your jewelry business? A. I do.

Q. How is your building located with reference to the Hagerstown Bank?

(Objected to.)

A. There is an alley between.

Q. On West Washington Street? A. Yes, sir.

(143) Q. How many stories has your building?

(Objected to.)

A. Three stories.

Q. How long has it been built and did you build it?

(Objected to.)

A. I built it in 1889.

Q. For what purpose were the second and third stories constructed?

(Objected to.)

A. The front is for business offices.

Q. Do you find it a comparatively easy matter to keep the second and third stories of your building rented all the time?

(Objected to.)

A. I haven't any trouble with the second floor and not with the third floor annex, but the third floor of the front has not regularly been rented. It is all rented now.

CROSS EXAMINATION.

By Col. LITTLE:

Q. How many vacant offices are there in your whole building now? A. One on the second floor.

Q. How long has that been vacant? A. Since the first of April.

Q. Have you any applicants for that office? A. Not just at this time.

Q. Is there an elevator in your building?

(Objected to.)

A. No, sir.

Q. How far is your building from the First National Bank building? A. About half a block.

(144) Q. Do you mean an ordinary block? A. In the same block I should say the distance between would be half a block.

Q. Do you mean a half block of the Square to the Court house? A. I would say it is half the distance between the Court House and the Square. My store is half the distance between the Court House and the Square.

Q. Are you a director in any Bank in town? A. In the Peoples National Bank.

RE-DIRECT EXAMINATION.

By Mr. WINGERT:

Q. How many stories does the Peoples National Bank have, where you are a director?

(Objected to.)

A. They haven't any.

Q. How many stories do they use for banking purposes?

(Objected to.)

A. They rent part of the ground floor of the Hotel Hamilton.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

MILTON KOHLER.

Personally appeared W. L. MIDDLEKAUFF, a witness of (145) lawful age, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By H. F. WINGERT, Esq.:

Q. Where do you reside? A. 665 W. Washington St., Hagerstown, Md.

Q. What is your occupation? A. I am a contractor.

Q. How long have you been a contractor? A. 23 years.

Q. Do you know the First National Bank, Hagerstown? A. I do.

Q. Would it be possible to take the front out of the building and put in a girder and give more light into the banking room without tearing down the building?

(Objected to.)

A. It would.

Q. Do you know that there is a partition wall in the First National Bank between the main banking room and the directors room?

(Objected to.)

A. I do not.

Q. Would it be possible to take the wall out of the side of the Bank Building on the alley and put in a steel girder

or truss, so as to give the banking room more light, without tearing down the bank building?

(Objected to.)

A. It would, yes.

CROSS EXAMINATION.

By Col LITTLE:

Q. Have you been contracting for building for the Wingerts lately?

(Objected to.)
(146)
A. No, sir.

RE-DIRECT EXAMINATION.

By Mr. WINGERT:

Q. Are you a stockholder in the First National Bank? A. No, sir.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

W. L. MIDDLEKAUFF.

Personally appeared GEORGE B. McC. WOLF, a witness of lawful age, being duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By H. F. WINGERT, Esq.:

Q. Where do you live and what is your occupation? A. I live on South Potomac Street in Hagerstown, Maryland I am a contractor.

Q. For how long have you been a contractor? A. 21 years.

Q. Do you know the First National Bank building in Hagerstown? A. Yes.

Q. Would it be possible to take out the wall of the first story of the First National Bank building and throw in a (147) truss or girder, so as to give more light to the banking room without tearing down the building?

(Objected to.)

A. It would.

Q. Do you know if there is a partition between the main banking room of the First National Bank and the directors room, running across the building?

(Objected to.)

A. I think there is.

Q. Would it be possible to take that partition out and put a girder in there without tearing down the building?

(Objected to.)

A. It could be done, yes.

Q. Would it be possible to take the wall on the alley side of the building out and put in a girder or truss so as to give more light to the banking room without tearing down the building?

(Objected to.)

A. Yes, it could be done.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

GEO. B. McC. WOLF.

(148) Personally appeared JOHN B. KIEFFER, a witness of lawful age, being duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By H. F. WINGERT, Esq.

Q. State where you live and what is your occupation? A. I live in Hagerstown, Maryland, and am cashier of the Hagerstown Bank.

(Witness is here shown paper headed "Statement Hagerstown Bank, Hagerstown, Maryland," and is asked:

Q. Is that the last regular statement issued by the Bank?

(Objected to.)

A. Yes, that is the last statement.

Q. Is the item of "Banking House, furniture and fixtures, $10,000"—does that include also the lot on which the Bank is situated?

(Objected to.)

A. Yes, that includes the lot.

Q. The cut on the first page is a cut of the Hagerstown Bank, is it?

(Objected to.)

A. Yes, sir.

(Paper marked "Exhibit No. 3" is herewith filed as part of this deposition.) (Objected to.)

Q. What are the total assets of the Hagerstown Bank at the present day?

(Objected to.)

A. Over $2,000,000.

Q. Did the Hagerstown Bank recently complete some important improvements?

(149)

(Objected to.)

A. Yes, about two years ago.

Q. What did they consist of?

(Objected to.)

A. Tearing out the wall in the banking room and throwing it all into one, putting in a vault and digging out cellar under the banking room, putting in new furniture and fixtures.

Q. At about what cost?

(Objected to.)

A. $25,000.

Q. From your conversation with Mr. Daniel Doub what did you gather, that he wanted to buy it for people opposed to the improvements or in favor of the improvements?

(Objected to as being mere inference.)

A. It was not stated either way, as to whether it was for those in favor of the improvements or those opposed.

Q. What was your understanding of it?

(Objected to.)

A. It was not stated to me.

Q. What was your understanding, gathered from his conversation?

(Objected to.)

A. If you want my own opinion—

Q. Give us your opinion?

(Objected to.)

A. My own opinion was that it was for those in opposition to the improvements, but it was not so stated to me and I may have been wrong.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

(153)

JAMES E. S. PRYOR.

Personally appeared EARL TROUP, a witness of lawful age, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By H. F. WINGERT, Esq.:

Q. State where you live? A. South Prospect Street, or on the Williamsport Pike, Hagerstown, Maryland.

Q. Do you remember an occasion recently when H. F. Wingert called at your residence and saw you and, amongst

other things, you told him that Frank Mish had just left your house about an hour before that: do you remember the occasion?

(Objected to.)

A. I do.

Q. Do you remember that you admitted to H. F. Wingert, on that occasion, that you had had a conversation with Mr. Harvey Heyser, who is now cashier of the First National Bank, sometime or other before last Christmas, with reference to the value of the First National Bank stock, and that Mr. Heyser told you that First National Bank stock would go to $40.00 per share, or something to that effect?

(Objected to.)

(At this point Col. Little states that objection is made to the question concerning Mr. Mish, to which counsel for complainant objects.)

A. It was to that effect but not exactly in those words.

Q. Do I understand you, then, that Mr. Heyser did say to you something to that effect?

(Objected to.)

(154) A. He did say something to that effect; I do not remember his words.

Q. State as near as you can remember, where you had this conversation with Mr. Heyser?

(Objected to.)

A. On the pavement in front of the Hamilton Hotel.

Q. State whether it was about this time you consulted William Wingert about the advisability of selling your bank stock at that time, as near as you can remember?

(Objected to.)

A. I remember it.

Q. State, as near as you can remember, about what Mr. Heyser did tell you as to the value of First National Bank stock, in front of the Hotel Hamilton, on the occasion referred to above?

(Objected to.)

A. I think I may have asked him his advice—what he advised me to do. He said he couldn't advise me—I can not recall word for word—but he said it might go to $40.00 in a couple of years time—as well as I remember—and that I would be sorry I sold it.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer. I do not know anything further.

J. EARL TROUP.

At this point counsel for plaintiff announces their case (155) closed with the reservation of the right to file a plat of the Public Square, North Potomac Street to Franklin Street. South Potomac Street to Antietam Street. West Washington Street to Jonathan Street, both sides of the Streets, which will be marked "Exhibit No. 4," to which counsel for defendants reserves the right to object.

"Exhibit No. 4, filed May 4th, 1909."

UNITED STATES OF AMERICA,
District of Maryland, } to-wit:

(156)

Be it remembered, That in pursuanace of an agreement between counsel for Lewis P. Wingert and the First National Bank and others, parties complainant and defendant in the above entitled cause, I, Alexander R. Hagner, United States Commissioner for the District of Maryland, at Hagerstown, was appointed to take depositions of witnesses in said cause, and the counsel for both complainant and defendant agreeing that verbal notice of the taking of testimony in said cause by either party would be sufficient notice thereof, I therefore certify that on the 14th day of April, 1909, and on the 19th day of April of said year, at my office No. 1 Mealey Row, South Jonathan Street, Hagerstown, Maryland, personally appeared before me on said 14th day of April, in said year, Edward Oswald, Lewis P. Wingert, William Wingert, Rufus Hays, Owen D. Sherley and Sylvester Young, and further certify that on the 19th day of April, 1909, personally appeared before me Claggett D. Spangler, George B. McC. Wolf, John B. Kieffer, Joseph Kausler, William H. Tice, A. J. Schindel, Milton Kohler, John D. Newcomer, S. M. Bloom, William L.

Middlekauff, Earl Troup and James E. S. Pryor, and all having been by me first sworn to testify the truth relative to the matters inquired of, severally gave the annexed depositions by them severally signed; the said depositions were taken down in shorthand by a stenographer, Miss Carrie Barr, and by her transcribed on a typewriter, as per agreement by the counsel for both complainant and defendants, Henry F. Wingert, Miller Wingert, and Alex. Neill, Jr., appeared before me to represent the complainant, and Col. Charles A. Little to repre-
(157) sent the defendants.

Exhibit Nos. 1, 2, 3, and 4, also Exhibits "For Sale," Photograph of Bank, and L. P. W. were duly offered as evidence on behalf of the complainant and filed in said cause.

The annexed depositions were taken to be read at the hearing of the above entitled cause in the U. S. District Court for the District of Maryland, at Baltimore; no date for said hearing being known to the Commissioner.

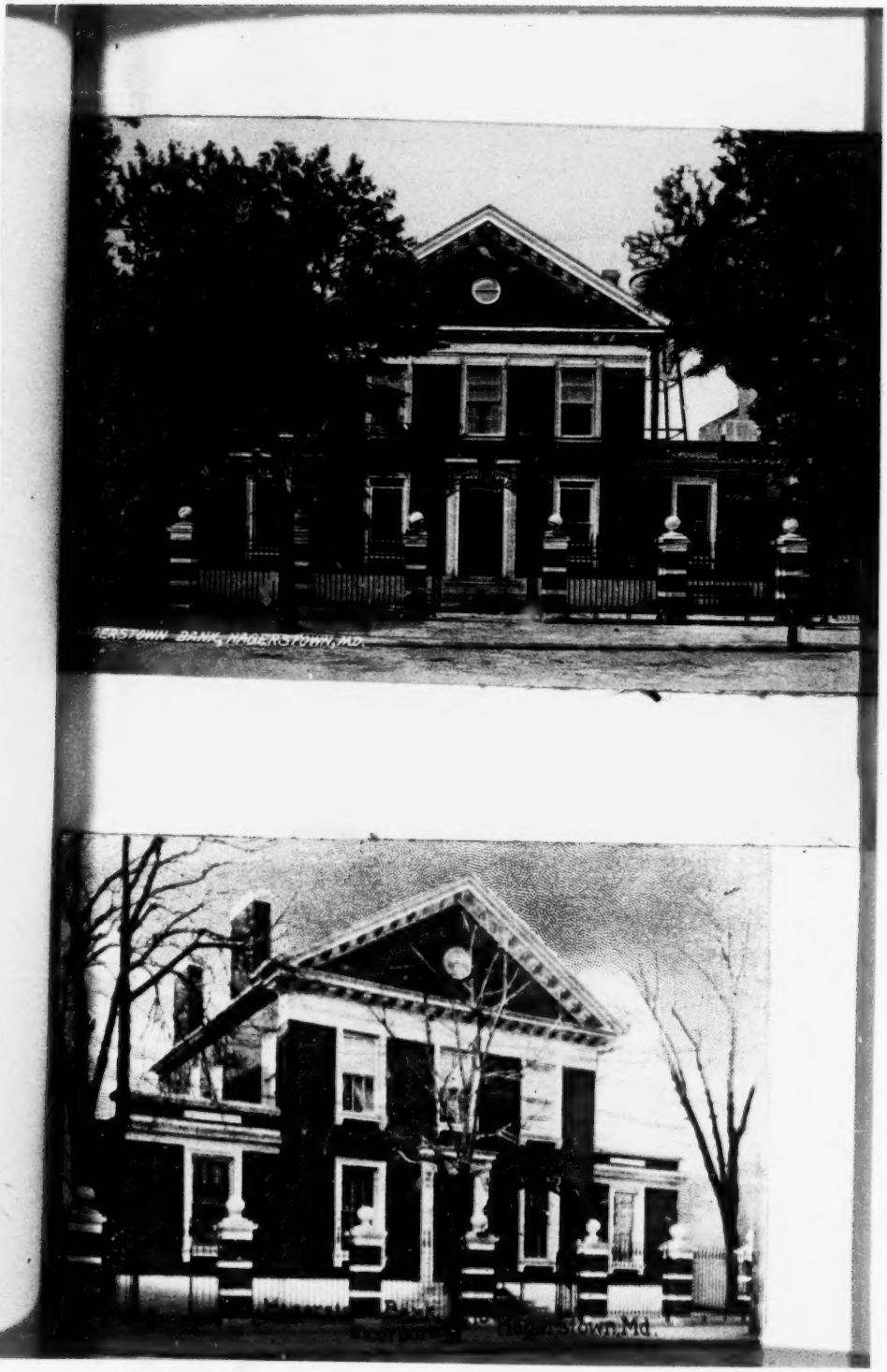
I certify that said depositions have been retained in my possession for the purpose of forwarding them to the Court for which they were taken.

I further certify that I am not of counsel in any way in said case, and have no interest in the same.

In Testimony Whereof, I have hereunto set my hand and seal this 11th day of June, 1909.

ALEX R. HAGNER,
Commissioner of the Circuit Court of the United States for the District of Maryland.

[Commissioner's Seal.]


ERSTOWN BANK, HAGERSTOWN, MD.

THIS PAGE BOUND VERTICAL IN BOOK

STATEMENT

# HAGERSTOWN BANK

HAGERSTOWN, MD.

DIRECTORS:

EDWARD W. MEALEY
WM. KEALHOFER
W. H. McCARDELL
SAMUEL B. LOOSE
DAVID S. BOYER
HENRY F. WINGERT
BENJ. A. BETTS
WM. U. ROULETTE.

ESTABLISHED 1806.

CAPITAL STOCK $150,000

SURPLUS FUND $150,000

UNDIVIDED PROFITS $83,507.08

ALEXANDER NEILL,
President.
JOHN B. KIEFFER,
Cashier.
JOHN S. KAUSLER,
Assistant Cashier.

# HAGERSTOWN BANK,

AT HAGERSTOWN,
IN THE STATE OF MARYLAND,

## AT THE CLOSE OF BUSINESS FEBRUARY 5, 1909

| RESOURCES. | | LIABILITIES. | |
|---|---|---|---|
| Loans and Discounts | $655,025 89 | Capital Stock paid in | $150,000 00 |
| Overdrafts, secured and unsecured | 724 86 | Surplus | 200,000 00 |
| Stocks, securities, etc | 985,667 54 | Undivided Profits, Less Expenses | 71,502 23 |
| Banking House, Furniture and Fixtures | 10,000 00 | Due to National Banks | 2,078 52 |
| Other Real Estate and Mortgages owned | 129 24 | Due to State Banks | 10,366 97 |
| Due from National Banks | 205,326 45 | Dividends Unpaid | 1,907 25 |
| Due from State Banks | 44,257 11 | Individual Deposits subject to check | 1,547,065 74 |
| Due from Private Banks and Bankers | | Certified Checks | 204 42 |
| Checks and Other Cash Items | 17,874 63 | | |
| Fractional Paper Currency, Nickels, and Cents | 1,964 91 | | |
| Specie $19,617 50 | | | |
| Legal-tender Notes 42,537 00 | 62,154 50 | | |
| Total | $1,983,125 13 | Total | $1,983,125 13 |

STATE OF MARYLAND, *County of Washington*, } ss.

I, John B. Kieffer, Cashier of the above named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

JOHN B. KIEFFER, Cashier.

Subscribed and sworn to before me this 10th day of February, 1908.

ALEXANDER NEILL, Jr., Notary Public.

POOR COPY
THIS PAGE BOUND VERTICAL IN BOOK
COPY BOUND CLOSE IN CENTER

MAPS

TOO

LARGE

FOR

FILMING

## PLAINTIFF'S EXHIBIT "FOR SALE."

(162) Filed June 14th, 1909.

FOR SALE.

59,000 Oak and Chestnut Pickets.
100,000 Chestnut Shingles.
100,000 Dry Plaster Laths.
5,000 Locust Posts.
1,000,000 feet Lumber.
Barns and Houses sawed to order

F. W. MISH,
Hagerstown, Md.

Office: First National Bank.

**EXHIBIT L. P. W.**

(163½) Hagerstown, Md., March 9th, 1909.

To the President and Board of Directors of the First National Bank of Hagerstown, Maryland.

Gentlemen:—I am informed that your board of directors contemplated tearing down the present bank building now standing on our lot on Washington Street for the purpose of erecting in its stead on said lot a large and expensive modern office building, the estimated cost of which when constructed will amount to approximately sixty thousand dollars. I am informed that it is your purpose to utilize the first floor of such new office building when erected for the location and transaction of the business of the bank, but that the remaining five stories are designed to produce offices and suits of rooms to be leased by the bank to the general public applying for the same as tenants. I am advised that the building of such office building by our bank and the holding of the same for such purposes is outside and beyond the powers conferred upon a National Bank and that the prosecution of such contemplated plan might result in the forfeiture of our bank's charter. I also respectfully submit the opinion that the withdrawal of so large a sum as $60,000 from the funds of the bank for the purpose of such investments in real estate is not consonant with sound banking.

I therefore earnestly protest by means of this letter against the Board of Directors and the Officers of the Bank carrying forward the said plans which I understand are contemplated as above, and respectfully demand as a stockholder in the bank that the Directors and Officers shall refrain from proceeding with such illegal enterprise. I am,

Yours very truly,

LEWIS P. WINGERT.

## DEFENDANTS' TESTIMONY.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
First National Bank of Hagerstown and others. } In Equity.

(164) Hagerstown, Md., June 2, 1909.

Present: For Complainant: H. F. Wingert, Miller Wingert, Alex. Neill, Jr.; For Defendant: Col. Charles A. Little.

It is hereby stipulated and agreed by and between the counsel for Lewis P. Wingert and the counsel for the First National Bank of Hagerstown and others, respectively, that depositions may be taken in Hagerstown, Maryland, before Alexander R. Hagner, U. S. Commissioner for the District of Maryland, at his office in Mealey Row, in said city, to be read as evidence in the case in equity wherein Lewis P. Wingert is complainant and First National Bank of Hagerstown and others are defendants, pending in the Circuit Court of the United States for the District of Maryland, that the testimony may be taken in shorthand by a stenographer and written out on a typewriter; and it is further agreed by the respective counsel aforesaid that the order of the court necessary for the taking of depositions of this day be and the same is hereby waived.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, and others. } In Equity.

(165) Hagerstown, Md., June 2, 1909.

Before U. S. Commissioner, Alex. R. Hagner.

Present: Henry F. Wingert, Miller Wingert and Alex. Neill, Jr., counsel for plaintiff; Col. C. A. Little, counsel for defendant.

### Depositions of Defendant.

Defendant, by its counsel, Col. C. A. Little, offers in evidence a certified copy of deed made the 28th day of April,

1857, by J. Dixon Roman, Trustee, to The Hagerstown Savings Bank, marked "Exhibit Deed," also also Organization Certificate of the First National Bank of Hagerstown, marked "Exhibit Organization Certificate."

Counsel for plaintiff objects to the offering in evidence of "Exhibit Deed."

Personally appeared HARVEY HEYSER, a witness of lawful age, produced in behalf of the defendant, being duly sworn, did depose and say:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

(166) Q. What is your age? A. I am 30 years of age.

Q. What is your occupation? A. Cashier of the First National Bank.

Q. How long have you been cashier of the First National Bank? A. Since January, 1909.

Q. Have you, at the Bank, a list of the stockholders of the Bank? A. We have.

Q. In what is that list of the stockholders kept? A. In the stock ledger.

Q. Where is the stock ledger? A. I have it here.

(Witness produces same.)

Q. Where is that stock ledger kept? A. Among the records of the Bank, in the vault or safe, as the case may be.

(Counsel for defendant hands witness paper marked "List of Stockholders of the First National Bank of Hagerstown, Maryland.")

Q. Look at that paper, Mr. Heyser, and state what it is? (167)

(Objected to.)

A. This is a list of the stockholders, of record January 1st, 1909.

Q. And from what has that list been taken? A. From the stock ledger of the Bank.

Q. State whether or not that is a correct copy of the list of stockholders as of January, 1909? A. Yes, it is.

Q. State whether or not that list has been compared and checked off with the list of stockholders in the stock ledger? A. It has.

Q. By whom? A. By myself.

Q. Does it correspond to the list of stockholders as given in the stock ledger as of January, 1909? A. Yes, sir.

Q. Have any changes been made in the list of stockholders since January, 1909? A. Yes, sir.

Q. Please state what changes have been made since January, 1909, and give the dates upon which said changes were made and the details thereof? A. The following transfers have been made:

March 30, 1909, Florence A. Spangler to F. W. Mish, 20 shares;

May 25, 1909, James Snyder to F. W. Mish, 10 shares.

May 25, 1909, T. B. South, Admr. of Elizabeth Ridenour, to J. O. Snyder, 25 shares.

Jan. 23, 1909, D. W. Doub, Trustee, to M. Berry Doub, 85 shares.

No other transfers have been made.

Q. Where did you get your information and facts as to these transfers and changes? A. From the stock ledger.

Q. By whom is the stock ledger kept? A. It is kept by Mr. Ezra Newcomer.

(168) Q. State whether or not you are acquainted with and know the handwriting of Mr. Ezra Newcomer? A. I do.

Q. Has Mr. Ezra Newcomer any connection with the First National Bank? A. Yes, sir.

Q. What is his connection? A. He is teller of the Bank.

Q. In whose handwriting are these changes that have been made since last January? A. Mr. Ezra Newcomer's.

Q. In whose handwriting are the entries of the list of stockholders of which that is a copy? A. Probably more than one, for the stock ledger is of some age, but most of them are in Mr. Ezra Newcomer's handwriting.

Q. Who has control and charge of that stock ledger—in whose possession is it? A. It is in the possession of the Bank.

Q. Who has charge of the books of the Bank—what officer of the Bank? A. The Cashier. I have charge of them.

Q. In whose possession, then, are they? A. In my possession.

### Cross Examination.

By Henry F. Wingert, Esq.:

Q. Mr. Heyser, do you or do you not know that the shares of stock transferred from Daniel W. Doub, trustee, to Berry Doub were in reality the stock of Berry Doub before they were

(169) transferred and that they were simply transferred to him because he became of age? Do you or do you not know that as a fact? A. I do not know.

Q. Do you know for whom Daniel W. Doub was trustee? A. I only presumed. I do not know.

Q. You said you presumed: finish that part of your statement? A. I presumed it was for Berry Doub.

Q. Look at the list of stockholders which you have before you and state whether or not, as a matter of fact, the Wingert family have not acquired more shares of stock in the First National Bank in the last three years than any other individual or family, and give the figures?

(Objected to by Col. Little on the ground of irrelevancy.)

A. I will have to turn to the ledger. (Witness turns to ledger.) They have; having purchased 1,033 shares.

Q. Examine the books and state what are the total number of shares owned by the Wingert family?

(Objected to on the ground of irrelevancy.)

A. 1,175 shares.

Q. Do you know if the Wingert family own any shares of stock that have not been transferred on the books? A. I do not.

(Counsel for defendant offers in evidence list of stockholders, marked "Exhibit List of Stockholders.")

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same (170) fully and at large in your answer. A.—I do not know anything further.

HARVEY H. HEYSER.

Personally appeared FRANK W. MISH, a witness produced in behalf of the defendant, being duly sworn, did depose and say:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. What is your age? A. 44 years.

Q. What is your occupation? A. President of the First National Bank.

Q. Where do you live? A. In Hagerstown, Md.

Counsel for the defendant here hands witness the deed filed in evidence marked "Exhibit Deed" and asks the witness to read the same.

Q. State where the tract of land described in that deed is situated and in whose possession the same now is?

(Objected to by Mr. Neill.)

A. This is ground now owned by the First National Bank and in the possession of the First National Bank.

(171) Q. How do you know that is the same land now in the possession of the First National Bank? A. I am familiar with the title of the First National Bank.

Q. How about the adjoining properties? A. It does not mention the adjoining property owners.

Q. Do you know how long the land described in that deed has been in the possession of the First National Bank? A. Since the organization of the First National Bank.

(At this point counsel for defendant asks for plat filed by the complainants. Examiner produces same.

Witness is here shown blue print or plat of a portion of Hagerstown filed in this cause as testimony by the complainants marked "Exhibit Plat" and is asked:

Q. Is the location of the First National Bank designated on that plat?

(Objected to by Mr. Neill.)

A. It is.

Q. State where, with reference to the location of the lot of the First National Bank on that plat, the City Savings Bank is located? A. It is located on the corner of Jonathan and West Washington streets, with the Hotel Hamilton between it and the First National Bank—the Peoples Bank and an alley and Jonathan street are between.

Q. In what direction from the First National Bank is

(172) the City Savings Bank located? A. It is west.

Q. State where the Mail Publishing Company building is located on this plat with reference to the First National Bank? A. It is located on South Jonathan street within a little over one-half square of the First National Bank.

Q. What, if anything, is between the First National Bank and the Mail Pub. Co. building? A. The Washington County Court House.

Q. Then how is the Mail building located with reference to the Court House? A. It adjoins the property of the Court House on the south, or in the rear.

Q. State where the new Post Office building now being erected by the U. S. Government is located with reference to the First National Bank? A. It is located on the corner of Jonathan and Antietam streets, within a little over a square from the First National Bank.

Q. Are there any other buildings of importance located in the vicinity of the new Post Office building? If so, state what they are and where located? A. The Baltimore & Ohio R. R. station is on the opposite corner from the New Post Office, and M. P. Moller is erecting a six story hotel on the opposite corner.

(Mr. Neill objects to the statement concerning the six story hotel building being erected, as the same has not been erected nor the foundation completed.)

A. It is in the course of construction.

(173) Q. Where is the Washington County Free Library located with reference to the First National Bank? A. On South Jonathan street within a little over a half square of the First National Bank building; also the Herald Pub. Co., which adjoins the Library.

Q. On what street is the Herald Pub. Co.? A. South Jonathan St.

Q. Are there any other important and prominent buildings in the vicinity of the First National Bank? If so, state where they are and what they are—and that are not noted on this plat? A. I can not recall anything.

Q. State how the First National Bank property is located with reference to the business portion of Hagerstown? A. It is in the very center of the active business portion.

Q. How far is it from the Public Square of the town? A. Less than a square.

Q. Just state when the First National Bank definitely determined to tear down the building on their lot and to erect a new six story building thereon? A. Do you mean the original vote?

Q. Yes, when they first determined to do that? A. This determination has been a growth.

Q. When it was finally determined to tear it down and put up a new six story building? A. It was first intended to simply remodel that, but as the plans developed it appeared to be more advantageous to tear down the old building and erect a new building.

(174) Q. When was it finally determined to erect an entirely new building? A. March 9th—but it only has reference

to the employment of the superintendent. On the 9th of March we employed Mr. Lamkin. It was back further than that. On March 2nd I find the manner of erecting the new building taken up and the Board decided to employ a contractor.

(Reading from minutes objected to.)

March 9th—we changed this from time to time—I think it was before that time; I can not just recall the exact date.

Q. By whom, if anyone, was it determined to tear down the building on the First National Bank lot and erect a new six story building thereon? A. It was determined by the Board of Directors.

Q. Where? A. In the Directors' room of the First National Bank.

Q. State whether or not a record was made of the action of the Board of Directors at its meeting with reference to the erection of this new building? A. You mean to tear down the building?

Q. Yes. A. Here is the record of it that all the directors voted in the affirmative except Mr. William Wingert, who voted in the negative.

Q. Can you find the record of that in the minutes of any meeting? A. I can.

(175) Q. Where do you find it? A. April 13th, 1909.

Q. Where do you find that record? A. In the minutes of the Board meeting.

Q. Who keeps the minutes of the meetings of the Board of Directors of the First National Bank? A. I do.

Q. In whose handwriting are those records made? A. In mine.

Q. Just state what action the minutes show was taken with reference to the erection of the new bank building on April 13th, 1909?

(Objected to by Mr. Neill for the reason that the record speaks for itself.)

(Witness reads from the Minute Book of the First National Bank, to which reading counsel for plaintiff objects.)

Reads: "On motion of Dr. McCauley, seconded by Isaac Ankeney, the following resolution was passed, all the Directors voting in the affirmative except William Wingert, who voted in the negative: Resolved, by the Board of Directors of the First National Bank of Hagerstown, Maryland, that the Board of Directors proceed to tear down the present banking house and building, and that they proceed to erect on the site of the pres-

ent building the new story banking house and office building in accordance with plans heretofore adopted by the Board of Directors."

Q. Was any action taken by the Board of Directors in pur-
(176) suance of that resolution? A. There was.

Q. State what has been done?

(Objected to.)

A. They proceeded to move out of the old building to temporary quarters on the southeast corner of the Square and to tear down the old bank building.

By Mr. NEILL: Was that done by resolution? A. The action followed the resolution.

(Objected to by Mr. Neill.)

Q. State whether or not the question of making these changes and improvements was ever submitted to the stockholders of the Bank? A. It was.

Q. In what manner? A. By the members of the Board of Directors.

Q. Explain how it was done? A. The stockholders were consulted from time to time from the inception of the plan to rebuild the new building, but after Mr. Lewis P. Wingert filed his suit to prevent the erection of the building, concerted action was taken by the ten Directors who favored the erection of the new building.

(Objected to by Mr. Neill for the reason that it is not the best testimony that can be offered.)

Q. State what they did, if anything? A. They consulted the stockholders and had them to sign a statement expressing confidence in the judgment and ability of the Board of Directors generally and particularly assenting to the erection of a new six story bank and office building.

(177) Q. State whether or not you consulted and conferred with any of the stockholders of the Bank individually and whether you secured the consent of any of said stockholders to the plans or improvements contemplated?

(Objected to by Mr. Neill as being immaterial.)

A. I did. I personally saw and consulted a large number of the stockholders.

(Witness is here handed paper marked "Consent of Stockholders to Improvements," consisting of 21 pages clasped together, and asked:

Q. Go over this paper and name the stockholders whose names are found on said paper whom you personally saw and consulted with reference to these improvements?

(Objected to by Mr. Neill as irrelevant.)

A. The names and the number of shares I will read—I personally saw sign the paper.

Q. Go over the list on page 8 and state whether you saw all of them? A. Potomac Lodge No. 30 had a regular resolution. I noted that in my own handwriting.

Q. Go over page 8 and state all those you saw personally. A. I saw all on page 8 personally sign except Potomac Lodge No. 30, I. O. O. F. On page 9 I saw all except Lida B. Troup, Rhoda B. Troup and J. Earl Troup. All on page 10 I saw sign. On page 11 J. A. Wisherd promised me personally. I wrote to Mrs. Hagersan and she sent that through the mail.

Q. Look at pages 8, 9 and 10 and state whether you know (178) the handwriting of the parties whom you testified you saw personally and whose names are on those pages. A. I know the signature of a great many of them. I am not familiar with the signatures of a number of them, except that I saw them write it.

Q. Are there any of the names on page 8, 9 and 10, whom you have given, that you did not see write their names? A. Della Updegraff and Viola Updegraff, they were written by their husbands who attended to their business.

Q. Did you see the husbands write them? A. Yes.

Q. How about the others; did you or not see them write their names on the paper in person? A. I left the paper with the Rouskulps in the evening and I called in the morning and Miss Mary Rouskulp gave it to me with her signature on it and said they signed it.

(Objected to.)

Q. What do you say about the others, with the exception of the Updegraffs and Rouskulps? A. Afterwards I talked to Harry Rouskulp. I did not see them sign it. I left it in the evening and they handed it to me in the morning. I did not see them sign it.

Q. How about the others? A. The balance I saw sign.

Q. Are there any other names on that paper you saw signed? A. Yes, I saw nearly all of them signed.

Q. I mean besides those you have mentioned.

By the COMMISSIONER: Take the whole paper and state (179) whether or not you know of any others? A. On page 11 I signed myself, 333 shares. On page 1, Sarah Hagerman 400 shares. I wrote her a letter—

(Objected to by Mr. Neill as not responsive to the question.)

Q. Do you know her handwriting? A. No, sir.

Q. Do you know anything further about this matter that I have overlooked and that you can recall? A. A general statement?

Q. Can you state about what time of the year you saw these stockholders whose signatures you have testified to? A. It was during the month of March, 1909.

Q. State what your judgment is with reference to the advisability of the erection of a six story bank and office building on the site of the First National Bank?

(Objected to by Mr. Neill as being herely a matter of opinion.)

A. I believe it will be of great advantage to all the stockholders of the First National Bank. The lot is located on the best square in the city of Hagerstown and on the best end of the best square, and on the best side of the best end of the best square in the City of Hagerstown, and is specially adapted as a location for a modern bank and office building. When the present bank building was built the lot was probably worth from $5,000 to $7,000. It has since grown in value until it is worth to-day $40,000. It is the object and purpose of the Board of Directors to utilize and make productive to the utmost degree the value which has grown into the present location. That is my reason and judgment.

(180) (Objected to by Mr. Neill on the ground that it is irrelevant, a matter of opinion, and not responsive to the question.)

Q. What effect, if any, will the erection of the building as contemplated have upon the rental value of the portion of the building used for banking purposes, to the best of your judgment?

(Objected to by Mr. Neill on the ground of being merely a matter of opinion.)

A. I believe the rent for the rooms in the building will pay a large return on the money invested, to the stockholders, than

they are now receiving on the average of their investments and that in addition the First National Bank will have a large, handsome and commodious banking home free of charge, free of expense.

Q. State the condition of the banking room of the First National Bank at the time of the institution of this suit? A. The banking room and fixtures were very much in need of repair and I believe it was unanimously agreed by the Board of Directors that it was necessary to make some necessary improvements.

Q. Do you or not know, and can you say, whether there is at this time a demand for an office building such as is contemplated by the First National Bank, in Hagerstown; if so, give your reasons therefor.

(Objected to by Mr. Neill on the ground of being merely a matter of opinion and witness is not properly qualified to answer.)

A. I believe there is a demand for such a building, and my reasons for so believing are because I have been approached (181) by a large number of lawyers, physicians, dentists, auctioneers and other business men who desire to be accommodated with rooms in the proposed new building.

(Mr. Neill, of counsel for plaintiff, moves to strike out the above answer, as not being responsive to the question asked, and on the ground that it is irrelevant, embraces hearsay matter, and as being the opinion of a person not properly qualified.)

Witness of his own motion says:

At first it was proposed to erect a four story building. Mr. William Wingert, the one dissenting member of the Board of Directors, advocated at first the erection of a five and then a six story building, and then advocated the extension backwards of a larger office building. At one time he advocated waiting to acquire the Kausler property and then to tear down the First National Bank and the Kausler property and erect a one story banking building in the center of the two lots. The Board of Directors decided the Bank was not rich enough to expend money so prodigally for the mere home and purposes of business of the First National Bank.

(Counsel for plaintiff moves to strike out the answer and statement of Frank W. Mish, as the same is in response to no question, is irrelevant, contains hearsay matter, contains matters of actions on the part of the Board of Directors not shown

by the Minute Book, and as a matter of opinion on the part witness.)

(182) (Mr. H. F. Wingert, of counsel for plaintiff, objects to all the testimony of the witness because of repeated conversations between the witness and counsel for the Bank, and between Dr. McCauley and the witness, which conversations were not made a part of the record, not being heard by the Commissioner, and part of which were inaudible to counsel for plaintiff, and which counsel for plaintiff hold vitiate the testimony of said witness.)

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

Q. You are an attorney at law and a member of the Washington County Bar, are you not? A. Yes, sir.

Q. How long have you been living in Hagerstown? A. 20 years.

Q. How long have you been practicing law in Hagerstown? A. About 16 years.

Q. In what part of the town do you live? A. On Prospect street.

Q. Do you own an attractive and desirable residence on Prospect street?

(Objected to by counsel for defendant as irrelevant.)

A. I think so.

Q. State how Prospect street ranks as a residential part of Hagerstown?

(Objected to as irrelevant.)

A. It is one of the best residential streets in Hagerstown.

Q. You are a man of considerable means, are you not?

(Objected to.)

A. Moderately so.

Q. And you inherited a considerable estate from your father, did you not?

(Objected to as irrelevant.)

(183) A. Yes.

Q. And the bulk of your property came from your father?

(Objected to as irrelevant.)

A. I have acquired more than I inherited.
Q. In what is the bulk of your means invested?

(Objected to as irrelevant.)

A. In real estate.
Q. State what kind of real estate?

(Objected to as irrelevant.)

A. Farming lands and houses in Hagerstown.
Q. State how many farms you have and where they are located?

(Objected to as irrelevant.)

A. 13 farms.
Q. And their location?

(Objected to as irrelevant.)

A. In Washington County, Maryland, and Berkeley County, West Virginia.
Q. Give the number of farms in each County?

(Objected to as irrelevant.)

A. 9 in Washington County and 4 in Berkeley County.
Q. State whether or not you have any money invested in an insurance company, with headquarters at Charles Town, W. Va., and what amount?

(Objected to as irrelevant.)

A. I don't think that is relevant. I have about $16,000 invested in an insurance company in Charles Town.
Q. Do you have any real estate located in the business center of Hagerstown, which business center is outlined in the blue print filed in this case and marked "Exhibit Plat," and also delineated by Mr. Edward Oswald in his testimony in this case, viz: Washington street between Jonathan street and the (184) Square, or on the Public Square, or Potomac street, between Franklin street and Antietam street?

(Objected to as irrelevant.)

A. I have not.

Q. Have you made any efforts in the 20 years you have been in Hagerstown to purchase any property in this section?

(Objected to as irrelevant.)

A. I have.
Q. What were they?

(Objected to as irrelevant.)

A. I was the highest bidder at public sale for the block opposite the Post Office, now occupied by McLaughlin and the drug store, but the trustee refused to knock it off, and afterwards sold it to another party.

Q. In the 20 years you have been in Hagerstown, have you had the management of any real estate in the business center as outlined above?

(Objected to as irrelevant.)

A. I have not.

Q. How long have you been president of the First National Bank? A. A little over two years.

Q. In an affidavit over your signature, filed in the above entitled cause with the clerk of the U. S. District Court in Baltimore, on March 31st, 1909, there appears this language:

"And that said answer of said Bank, now filed in this cause, was, before execution, submitted to the president and all the directors of said bank except William Wingert, who, this defendant was advised, was antagonistic to any defense."

(185). Is that true? A. I believe so.

Q. In an affidavit over your signature as president—over the signature of F. W. Mish, president, filed in the above entitled cause with the clerk of the U. S. *District* Court in Baltimore—on March 27th, I believe—there appears this language:

"And that he (meaning F. W. Mish, president,) has been duly authorized to sign the above answer (meaning the answer of the Bank) and to make this deposition."

Is that true? A. I believe so.

Q. Explain when, where and how you were "duly authorized to sign" the answer of the Bank, referred to, and to make the deposition referred to? A. After the suit was filed by Mr. Lewis P. Wingert, at the next meeting of the Board of Directors the question of defense to the suit was taken up and the

Board decided to make the proper defense to the suit and authorized Col. C. A. Little, as counsel for the Bank, to employ additional counsel in the City of Baltimore, which was done.

Q. Is that the whole of your answer to the aforegoing question? A. It is.

Q. Explain fully and at large why and how the tearing down of the Bank building of the First National Bank and the erection of the contemplated six story office building are "such steps as shall be necessary" for its (the Bank's( immediate accommodations in the transactions of its business. A. The condition of the Bank's real estate and building had become such that it was imperative to make necessary improvements. The question then arose as to the most judicious expenditure of the Bank's money in the interest of all the stockholders. After full, fair and free discussion by the entire Board of Directors, it was decided to make the necessary improvements. The loca tion of the lot was such that it was very much desired by lawyers and other professional men for the transaction of business. The Board of Directors decided that the best expenditure of the funds of the Bank would be in the erection of a new building rather than a remodelling of the old. A number of lawyers, doctors, dentists, auctioneers and other business men have approached the president of this Bank asking for accommodations in a new building.

(186)

(Objected to by Mr. Neill as being merely hearsay evidence.)

And it was calculated that by drawing in funds which the Bank had invested in other localities at low rates of interest, the same funds could be more profitably employed in the betterment of the Bank's real estate. It was believed that the proposed building would also very much help the general banking business of the First National Bank. Experience had shown in other localities that the erection of handsome and striking bank buildings had developed the line of deposits of the respective banks. The President of this Bank had visited, at his own expense, a number of new banking and office buildings in towns of a similar size to Hagerstown both in Maryland and West Virginia, and the information gathered on those journeys convinced him and other directors that the new and proposed building could be made similarly profitable in Hagerstown. It was also believed that the money invested in real estate in the center of Hagerstown would be as safely invested for the benefit of the stockholders as in any other direction and that by the erection of such a building as contemplated the Bank would acquire the best possible home at the least possible cost.

Q. Is that all of your answer to the aforegoing question? A. I believe so.

Q. Did you see Sophia B. C. Burkhart, who has 200 shares, put her signature to the paper on page 8? A. I believe so.

Q. Did you present the paper to her in person? A. No,
(187) I presented it through her husband, George Burkhart.

Q. You saw her put her signature to it? A. My recollection is he took it and went into the next room and got a pen and she sat at a table in the back room and signed it. I was in the front room but there was a large opening between the two rooms, and I could see.

Q. State whether or not you talked to Mrs. Sophia Burkhart about the matter of her signature to this paper? A. I talked to George Burkhart, her husband.

Q. Is that all of your answer to the aforegoing question? A. I may have said a few words to Mrs. Burkhart. I think possibly I did say a few words to Mrs. Burkhart.

Q. Do you remember anything Mrs. Burkhart said to you on the subject in reply? A. Nothing that struck me as remarkable.

Q. Did she say anything that was not remarkable? A. I can not remember.

Q. When you presented the paper to Mrs. Sophia Burkhart to sign, did you have with you a copy of the National Bank Act?

(Objected to by Col. Little as irrelevant.)

A. I did not.

Q. Did you explain to her on this occasion when she put her signature to this paper that the National Bank Act on the subject of a bank holding real estate read as follows:

"National Banking Associations may purchase, hold and convey real estate for the following purposes, and no others:

First, such as shall be necessary for its immediate accommodation in the transaction of its business?"

(Objected to on the ground of its irrelevancy.)

A. I did not.

(188) Q. Did you have with you a copy of the National Bank Act?

(Objected to on the ground of irrelevancy.)

A. I did not.

Q. When you obtained any or all of the assent of stockholders, to which you have referred above, did you explain to the stockholders the law relating to the province of National Banks to hold real estate?

(Objected to as irrelevant.)

A. I gave them my opinion of the law in some cases when they brought up the subject.

Q. Is that the whole of your answer to the aforegoing question? A. Some were not disposed to discuss the matter and others were so disposed. If any stockholder was disposed to investigate the law I was always very willing and ready to give him my view. I should say that a large majority did not go very much into that question.

Q. Where did you have your office immediately preceding the beginning of the tearing down of the First National Bank building?

(Objected to on the ground of irrelevancy.)

A. In Mealey's Row, West Washington street.

Q. Immediately preceding the tearing down of the First National Bank building? A. I had my private office in my own home and an office as president of the Bank in the First National Bank building.

Q. Did you transact all your private business at your private office in your own home?

(Objected to on the ground of irrelevancy.)

(189) A. I transacted the most of it, I should say.

Q. Did you transact any of it in the Directors' room of the First National Bank?

(Objected to on the ground of irrelevancy.)

A. I did occasionally.

Q. Where was your office before you became president of the First National Bank?

(Objected to on the ground of irrelevancy.)

A. Mealey's Row, West Washington street.

Q. When did you abandon the office in Mealey's Row, West Washington street?

(Objected to on the ground of irrelevancy.)

A. As soon as I was elected president of the First National Bank I discontinued the practice of law and gave up my law office.

Q. Have you returned to the First National Bank any substantial compensation for the use of the First National Bank for your own private purposes or for such use as you made of it?

(Objected to on the ground of irrelevancy.)

A. I did not. The Directors never objected, and I wished to spend as much time as possible in the Bank building and I believe my presence in the Bank building as much as possible was conducive to the welfare of the Bank and for the best interests of the Bank.

Q. Is there any other F. W. Mish in Hagerstown that you know of?

(Objected to on the ground of irrelevancy.)

A. No, sir.

Q. Would any advertisement in any of the local papers signed "F. W. Mish, Hagerstown, Md., Office First National (190) Bank,—" would you be the F. W. Mish? (Shows witness advertisement.)

(Objected to on the ground of irrelevancy.)

A. That is my advertisement, yes.

(Counsel for plaintiff offers in evidence advertisement and asks that same be filed as part of this witness' deposition, the same being marked "Exhibit, For Sale.")

(Objected to on the ground of irrelevancy.)

Which Exhibit reads as follows: "For Sale—50,000 oak and chestnut pickets; 100,000 chestnut shingles: 100,000 dry plaster lathes: 5,000 locust posts: 1,000,000 feet of lumber: barns and houses sawed to order. F. W. Mish, Office First National Bank, Hagerstown, Md."

Q. Is the F. W. Mish signed to this advertisement your name?

(Objected to on the ground of irrelevancy.)

A. It is.

Q. Who keeps the record of the expenses attending the tearing down of the First National Bank building and whatever goes with it?

(Objected to as being irrelevant and also on the ground that it is with reference to matters that have occurred since the bringing of this suit.)

A. The superintendent, Mr. Lamkin.

Q. He keeps the record of the expenses? A. He makes out the pay-roll, which is O. Kd. by a member of the Building Committee and is then presented and paid by the Bank.

Q. Who compose the Building Committee, and which one O. Ks. this pay-roll?

(Objected to as being irrelevant and also on the ground that it is with reference to matters that have occurred since the bringing of this suit.)

A. Col. C. A. Little, Dr. Chas. McCauley and myself (191) compose the Building Committee.

Q. C. A. Little, who is attorney for the Bank in this case, is also a Director of the First National Bank, is he not? A. Yes.

Q. Did you state which one of the members of the Building Committee O. Ks. the pay-roll?

(Objected to as being irrelevant and also on the ground that it is with reference to matters that have occurred since the bringing of this suit.)

A. Dr. McCauley has O. Kd. the bills so far.

Q. Have there been any other expenses attendant upon the contemplated improvements except the pay-roll?

(Objected to as being irrelevant and also on the ground that it is with reference to matters that have occurred since the bringing of this suit.)

A. We have had to rent a new banking room.

Q. Who keeps account of that expense?

(Objected to as being irrelevant and also on the ground that it is in reference to matters that have occurred since the bringing of this suit.)

A. The officers of the Bank.

Q. What other expenses have attended the contemplated improvements?

(Objected to as being irrelevant and also on the ground that it is in reference to matters that have occurred since the bringing of this suit.)

A. The expenses of an architect.

Q. Who has charge of that?

(Objected to as being irrelevant and also on the ground that it is in reference to matters that have occurred since the bringing of this suit.)

A. The Cashier of the Bank.

Q. Then, is it the Cashier of the Bank who keeps the record for the officers of the Bank?

(Objected to as being irrelevant and also on the ground that it is in reference to matters that have occurred since the (192) bringing of this suit.)

A. Yes.

Q. Mr. Lamkin is actually tearing down the building of the First National Bank at this time? A. He is.

Q. About how far has he progressed? A. He has torn down the back building and has the main building down to the first story.

Q. State when Mr. Lamkin began the actual work of tearing down the main building to which you refer? A. I can not remember the exact date: I should say a week ago.

Q. A week ago last Monday, was it not? What date would that be? May 24th, I believe? A. Yes, to the best of my recollection. I did not make any special note of it.

Q. Do you remember receiving on a Tuesday not long ago, when the Board of Directors of the First National Bank was in session, a letter signed by H. F. Wingert and Miller Wingert, advising that as counsel for the plaintiff in this case they had filed a petition in the United States Court in Baltimore, praying the court, amongst other things, to preserve unimpaired the right of action of the plaintiff in this case by restraining the directors from tearing down the present bank building, and with that letter a copy of the petition?

(Objected to as irrelevant.)

A. I do.

Q. Was that letter delivered to the meeting of the Board of Directors in the First National Bank?

(Objected to as irrelevant.)

(193) A. It was.

Q. Was it also prior to the beginning of the tearing down of the main Bank building?

(Objected to as irrelevant.)

A. It was, I believe. The same day you called me over the phone and stated the judge refused to grant any further restraining order.

Q. Did you hold, sometime in January, 1909, or about that time, a meeting of the Board of Directors, at night, in the First National Bank? A. I believe so. May I see the minutes?

(Witness looks at minutes.)

Q. Do you find any minutes of that meeting? A. I can not find the minutes of that meetings.

Q. What was the purpose of the meeting? A. The purpose of the meeting was to receive bids for the erection of the building, the remodelling of the building.

Q. Is it not the fact that William Wingert, a director, at one of the meetings of the directors, advised you as president and the Board also, of his opposition to the contemplated improvements, to-wit, the tearing down of the present Bank building and erecting a six story building instead, and asked you record upon the minutes that opposition? A. He did.

Q. Have you recorded on the minutes his opposition, as he requested? A. I suppose I have—yes, I have it recorded.

Q. State when you have it recorded? A. April 13th. My recollection is that up to that time he rather favored a six story (194) building. I do not remember at what time he changed his mind but I think it was after the filing of this suit. I ought to explain a little further—I wish to be fair. At times he opposed the building and at other times he seemed to be favorable to it. I am very distinct in my recollection that he repeatedly advised going higher on the ground, that if we had an elevator we should go higher. At other times he would appear to oppose the whole project, and I can not tell exactly where he stood, but should say, generally speaking, he stood in opposition.

Q. You stated you wished to be fair: Didn't he show clearly his opposition to the contemplated improvements and asked

you to note his objection prior to April 13th? A. I believe he did.

Q. Is it not a fact that one or more of the directors of the First National Bank are borrowing large sums of money out of the Bank?

(Objected to on the ground of its irrelevancy.)

By the COMMISSIONER:

If it is a question which pertains to the National Bank laws and if it in any way brings any of the directors in the position of being in violation of the law, you would have the right to refuse to answer.

A. There is no violation of the laws. Some of the Directors do borrow from the First National Bank.

Q. Is it not a fact that one or more of the Directors of the First National Bank are borrowing large sums of money out of the Bank? A. Some of the directors do borrow money.

(195) Q. Is it not a fact also, Mr. Mish, that the First National Bank at the present time, or in recent months, has been loaning money on the stock of the First National Bank as collateral?

(Objected to on the ground of its irrelevancy.)

A. It does not loan on the stocks of the Bank.

Q. Hasn't it been loaning, in recent months, money to either Grason Steffey, or Steffey & Findlay, on the stock of the First National Bank as collateral—or may it have been several months ago that the said loan was made? A. My recollection is there had been a loan made to Steffey & Findlay on other collateral, that some of that collateral was withdrawn and a few shares of the First National Bank stock was temporarily substituted. I can not remember the details of all the loans. Whatever they were, they were amply secured. A National Bank can not loan money on its own stock, but it can take its own stock for debts previously contracted.

Q. Did you ever ask any of the Wingert family for their consent in writing to the contemplated improvements heretofore referred to, or have you had anybody else ask them? A. I believe I asked William to sign it and present it to the family but he refused.

Q. Could the First National Bank at this moment pay all of its depositors if they made immediate demand for it?

(Objected to on the ground of its irrelevancy.)

A. I think we could pay them as rapidly as they would present their checks and books.

Q. Do you know what the amount of deposits are? A. I do.

(196) Q. State it? A. $554,000 to-day.

Q. How much cash does the Bank have in hand to-day?

(Objected to on the ground of irrelevancy.)

A. Our reserve fund we always count as cash. We probably have, to the best of my recollection, about $130,000 to-day; that is, including our reserve fund.

Q. Is the reserve fund cash? A. Yes.

Q. I mean cash in hand?

(Objected to on the ground of its irrelevancy.)

A. Actual money?

Q. Yes. A. I do not remember the exact amount to-day, but we usually carry about $50,000 actual money in hand.

Q. From what source is the money to come to meet the contemplated improvements referred to?

(Objected to.)

A. We have a great many collateral loans, aggregating probably $200,000, in Baltimore, Richmond and other points north and south, which is secured by collateral satisfactory to the Bank and which money is of no value to the Bank other than the interest which it brings. I would explain that we would very much sooner have local borrowers than foreign borrowers, because in the case of a local borrower they usually keep accounts in the bank and the bank gets some return. In the case of foreign borrower, he draws the money in cash and we get nothing in return but the interest; we get no influence, no deposits, no recommendation—it is a cold business transaction, renting your money and getting interest in return. In (197) the case of local borrowers, we find they usually keep a deposit or speak a good word for the bank, or we get certain other advantages that the other class of borrowers do not give us, and those loans are usually put out at the lowest rates of interest.

RE-EXAMINATION.

By Col. LITTLE:

Q. Do you remember when the answer of the Bank, the answer of the Directors of the Bank, the answer of Harvey Hey-

ser, cashier, and the answer of S. Lewis Lamkin were executed? I do not mean the day, I mean the occasion? A. I remember, yes.

Q. Where was it done? A. In the First National Bank building—in the Directors' room.

Q. Can you recall near about the time when that was done? A. It was the Thursday or Friday before the hearing in Baltimore, to the best of my recollection.

Q. Just state, as well as you can remember, what took place when those papers were executed?

(Objected to.)

A. I think all the directors of the Bank assembled there with the exception of Mr. Wingert and that each one had an individual answer to file and they executed all those individual answers, along with Mr. Lamkin and Mr. Heyser, who were also there, and I did not execute the answer of the Bank until Saturday morning of the day of the hearing, in Baltimore.

Q. State whether or not the answers of the Bank, of the Directors of the Bank and of Mr. Lamkin and Mr. Heyser were read on that occasion?

(Objected to.)

(198) A. They were, to the best of my recollection.

Q. Do you recall whether the answer of the Bank that was to be executed by you as president was read to the Board of Directors at that time? A. I believe it was.

Q. And when and where was the affidavit made by you to that answer? A. It was made in Baltimore the day of the hearing.

Q. State whether or not any objections were raised to the answers as prepared and submitted at that gathering? A. There was absolutely no dissenting vote or voice. There was no vote taken. There was no dissent.

Q. By whom were those answers submitted on that occasion and read? A. By counsel for the Bank.

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer.—Answer. I do not know anything further.

F. W. MISH.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

(199)

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, and others. } In Equity.

Hagerstown, Md., June 4, 1909.

Before proceeding to take the following testimony on behalf of the defendant, counsel for the plaintiff states that they wished to add to their objection to the testimony in chief of F. W. Mish what is a fact, that they frequently protested against conversations between the witness and the attorney for the Bank and between the witness and Dr. Charles McCauley, while the witness was giving his testimony.

Counsel for the defendant says that in addition to the objections made by him to the questions put to Frank W. Mish upon cross examination, on the ground of irrelevancy, that the said examination was not a proper cross examination and was not confined to the testimony offered by the defendant in chief.

After which exceptions and objections the following witnesses were examined on the behalf of the defendant:

Personally appeared HARRY W. ROUSKULP, a witness of lawful age produced on behalf of the defendant, being duly sworn, did dispose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. What is your age? A. I was born November 27th, 1865, 44 years old.

(200) Q. Where do you live? A. 145 E. Baltimore St.

Q. What is your occupation? A. Tailor.

Q. Do you know Rebecca Rouskulp? A. I do.

Q. Who is she? A. She is my aunt.

Q. Do know her signature? A. I do.

Q. Have you ever seen her write her name? A. I never saw her write her name but I have seen recipts she wrote. She takes a little time to do it. She is a woman about 86 years old and she takes her time.

(Objected to by Mr. Neill.)

I have seen her go through the motion of writing, with paper and pen. I saw two receipts she signed yesterday.

Q. How do know she signed them? A. I can tell by the writing. When they bring them home they always show them to me. Sometimes Aunt Rebecca writes better than others.

Witness is here shown paper marked "Consent of Stockholders to Improvements," and is asked to look at the name of Rebecca Rouskulp on page 5 and to state whose signature that is?

(Objected to by Mr. Neill.)

A. That is my Aunt Rebecca Rouskulp's signature.

Q. Who is Harry W. Rouskulp? A. That is myself.

Q. Who is Emma L. Rouskulp? A. My sister.

(201) Q. Who is Mary R. Rouskulp? My sister.

Witness is here handed paper marked "Consent of Stockholders to Improvements," and referred to page 8 thereof, and ask in whose handwriting is the name of Harry W. Rouskulp on that page? A. In my own handwriting.

Q. What name is under that? A. Emma L. Rouskulp.

Q. In whose handwriting is that?

(Objected to by Mr. Neill.)

A. In hers.

Q. How do you know it is in her handwriting?

(Objected to by Mr. Neill.)

A. I often saw her write.

Q. How often have you seen her write? A. Nearly every night she is writing postal cards and letters to her friends. I go in there there or four times a day.

Q. Whose signature is that? A. My sister's, Emma L. Rouskulp.

Q. Whose is the next name?

(Objected to.)

A. My other sister, Mary R. Rouskulp.

Q. In whose handwriting is the name of Mary R. Rouskulp?

(Objected to.)

A. My sister's, Mary R. Rouskulp's.
Q. Who signed that name, Mary R. Rouskulp?

(Objected to.)

(202) A. She did.
Q. How do you know she signed it? A. I can pick that writing out of a thousand.
Q. Why can you pick it out of a thousand? A. I see it so often.
Q. Did you ever see her write it? A. Certainly.
Q. Did you see her write this one? A. No, sir.
Q. Whose signature is that?

(Objected to by Mr. Neill generally and as repetition.)

A. My sister's.
Q. Which sister? A. Mary R. Rouskulp.
Q. Who signed the name of Mary R. Rouskulp to that paper?

(Objected to by Mr. Neill.)

A. She did it herself.
Q. Do you know any other names on this list? A. If I look over it I might find one.
Witness is here shown paper marked "Consent of Stockholders to Improvements," and is asked to state whether or not he knows any other signatures on that paper? A. It ought to be on here some place. Yes, I can swear to this one.
Q. Who is it? A. Sarah E. Middlekauff.

(Objected to by Mr. Neill.)

Q. On what page is that name? A. Page 10.
(203) Q. In whose handwriting is the name of Sarah E. Middlekauff? A. She is my sister and it is in her handwriting.
Q. Who signed her name to that paper? A. She did it herself.
Q. Did you see her do it? A. No, sir.
Q. How do you know, then, she signed it?

(Objected to by Mr. Neill.)

A. I often saw her write. In fact, she wrote her name on a card last night for me.

(Objected to by Mr. Neill.)

Q. You do know her signature then? A. Yes.

Q. Are there any others on that paper you can testify to? A. No, sir.

### Cross Examination.

By Mr. H. F. Wingert:

Q. How many of the signatures which you have identified were made in your presence and under your eyes and observation? A. None of them.

Q. You saw yourself attach your signature, didn't you? A. Yes, certainly.

Q. By whom was the paper to which you attached your signature presented to you when you attached your signature? A. The paper was left at the house, 36 South Potomac Street. Mr. Mish came to see me and asked if I would sign, and I said, "Certainly, I would sign anything for the good of the Bank;" so the paper was left at the house, I guess in March (204) or April, along there.

Q. State by whom the paper was left there?

(Objected to by Col Little.)

A. I think Mr. Mish left it there—I did not see.

Q. You did see it left there? A. No, sir.

Q. Mr. Mish saw you personally and asked you to sign it? A. He spoke to me—No, hold up—Dr. Cauley spoke to me and I was going to sign the Doctor's paper, and when I went down home Mr. Mish had left a paper there, and I thought it made no difference and I just signed his paper.

Q. Do I understand that both Dr. Cauley and F. W. Mish spoke to you about signing? A. They mentioned it.

Q. What explanation, if any, did they make to you in regard to the import of signing this paper when they spoke to you about it? A. I don't think they made—let me see, I will have to think a little—I don't they said much of anything. They said they had a paper or petition they wanted to get up for the stockholders to sign, that they wanted to make some improvements at the Bank, and I heard there was another party kicked—(At this point Mr. Wingert stopped witness.)

Q. Is that all of your answer to the aforegoing question? A. You stopped me. There is not much to say. The paper was left at the house. I studied over the matter and I signed the paper and my sisters signed the paper. What else was there to do? I would like to see the Bank go on. I like to see improvements as well as anybody else.

(205) Q. Did you, at the time of signing your name to the paper in question, have any definite knowledge about the provisions of the National Bank Act with reference to the improvements in this case?

(Objected to by Col Little, generally and because irrelevant.)

A. No, I did not know anything about the National Bank Act or of any law—I just saw in the paper—(Objected to) that they wanted to make improvements to the Bank—that is what I saw in the paper,—and then I heard that they did, also. I kept watching the building, and then they commenced tearing it down.

RE-EXAMINATION.

By Col. LITTLE:

Q. State whether or not you knew what paper you were signing? A. I signed the First National Bank petition—I reckon got out by the Directors to send around to the stockholders to sign, to make the improvements.

Q. You knew what you were signing, did you?

(Objected to by Mr. Neill as leading and generally.)

A. I certainly did or I wouldn't have put my name there.

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

HARRY W. ROUSKULP.

Personally appeared C. M. HORST, a witness of lawful age, produced in behalf of the defendant, being duly sworn, (206) did depose and say:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. Where do you live? A. In Hagerstown, Maryland.

Q. What is your age? A. I am 35 years old.

Q. What is your occupation? A. I am in the grain, coal and feed business.

Q. Have you any connection or relation with the First National Bank of Hagerstown, Maryland? A. I am one of the directors of the First National Bank of Hagerstown.

Witness is here handed paper marked "Consent of Stockholders to Improvements," and is asked to look at the signatures on page 18 of said paper and to state whose signatures are on that page?

(Objected to by Mr. Neill on the ground that the paper speaks for itself.)

A. The first signature on this page is my own signature, C. M. Horst.

Q. Who signed that? A. I signed it personally.

Q. Did you know what you were signing? A. Yes, sir. I signed it in the presence of the next man who signed the paper.

Q. Who is the next man? A. J. P. Winters.

(207) Whose signature is that? A. Mr. J. P. Winter's signature.

Q. How do you know? A. I saw him personally sign.

Q. Whose is the next name?

(Objected to by Mr. Neill.)

A. George M. Ankeney.

Q. In whose handwriting is the signature?

(Objected to by Mr. Neill.)

A. In George M. Ankeney's handwriting.

Q. How do you know? A. I saw him personally sign the paper. The next signature is Jacob A. Sniveley's.

Q. How do you know it is his signature? A. I saw him write his name on this paper.

Q. I want to know whether, as a director of the Bank, you are in favor of the contemplated improvements at the Bank or opposed to them?

(Objected to by Mr. Neill.)

A. I am in favor of the improvements to the Bank in building a six story office building.

Q. Why are you in favor of them?

(Objected to by Mr. Neill.)

A. I think it is for the welfare of the Bank and to the Bank's interest to do so. Considering the present location of the Bank, I think it a good investment for the Bank to have a good and fine building there.

(Objected to by Mr. Neill, and asked to be stricken from the record, as being the opinion of one not qualified to give his opinion.)

CROSS EXAMINATION.

By H. F. WINGERT, Esq.:

(208) How many shares of stock do you have in the First National Bank? A. 19.

Q. How much money have you got borrowed out of the First National Bank at this time?

(Objected to by Col. C. A. Little on the ground that it is irrelevant and not a proper question to ask on cross examination.)

A. Not one cent.

Q. How much had you borrowed out of it at the time the Bank decided to make these improvements?

(Objected to by Col. C. A. Little on the ground that it is irrelevant and not a proper question to ask on cross examination.)

A. I really can not say if I had any borrowed at that time.

Q. What is the most amount of money you had borrowed out of the First National Bank since you have been a director there?

Objected to by Col. Little on the ground that it is irrelevant and not a proper question to ask on cross examination.)

Witness: Mr. Commissioner, must I answer that question?

Commissioner: You can do as you wish.

Q. What is the most amount of money you have had borrowed out of the Bank, or has been advanced by the Bank for

your benefit, at any time since F. W. Mish has been President of the Bank?

Objected to by Col. Little on the ground that it is irrelevant and not a proper question to ask on cross examination.)

A. I decline to answer the question.

Counsel for plaintiff insists on an answer to the aforegoing question.

Witness: I decline to answer.

(209)

Q. How does it happen that you saw Mr. Winters and Mr. Ankeney and others, of whom you have testified in your examination in chief, make their signatures, to which you have testified? A. The Directors of the First National Bank, at the meetings they were holding from time to time—at least once a week, and sometimes there were special meetings called—and through these meetings we decided to build a new building, and before the thing got started there were exceptions taken to it by stockholders. Then we thought it best to find out the majority, or what portion of the stockholders would be in favor of a new bank building and also satisfied with the present management under the present Board of Directors. That being the case, I had one of the papers that was circulated among the stockholders. I personally went to these places and visited these people and asked them if they were in favor of it—gave them the paper to read, rather, and asked them if they were in favor of the new bank building and satisfied with the present management of the Bank, and if so, I would like to have their signature. I did not ask one man that refused to sign. Of course I only had a few I called on. I was busy and did the best I could. I would have gone to see more people had I been able to do so. That is my answer to the question as to how it happened I saw these signatures.

Q. Who handed you the paper? A. It was decided by the Board of Directors that this was the best thing to do. I can not say who handed me the paper.

Q. At whose request did you take the paper and go forth for these signatures? A. At the request of the Board of

(210) Directors of the Bank.

Q. The whole Board? A. Excluding one Not excluding one-all but one.

Q. Did all of the ten directors speak to you about it personally? A. So far as I know, I had a personal talk with each of them.

Q. Did each one of the ten directors ask you to take the paper and go out and get these signatures to it? A. Ask me the question again.

Q. Did each one of the ten directors ask you to take the paper and go out and get these signatures to it? A. No, they didn't.

Q. Were you given any instructions before you were sent out with this paper as to the law bearing on the subject? A. I have read the National Bank Act myself.

Q. At this time? A. Well, I occasionally read it.

Q. Had you read it at the time you went forth with this paper? A. I can not tell you how long it was I read it last.

Q. Have you given the whole of your answer to the previous question? A. I think I have answered the question fully.

Q. Had you read it at the time you went forth with this paper? A. Yes, I had read the National Bank Act at the time I went forth with that paper.

Q. Did you take the National Bank Act with you and read it to the people whose signatures you obtained before they signed the paper?

(Objected to by Col. Little as being irrelevant.)

A. I did not.

Q. Did you explain to the persons whose signatures you obtained the provisions of the National Bank Act bearing upon (211) the question?

(Objected to by Col. Little on the ground of irrelevancy.)

A. I did not.

Q. Did any of the persons, whose signatures you obtained, before signing the paper, explain to you that they understood or were familiar with the provisions of the National Bank Act pertaining to this question?

(Objected to by Col. Little, generally and on the ground of irrelevancy.)

A. They did not.

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same

fully and at large in your answer. Answer.—I do not know anything further.

C. M. HORST.

Personally appeared NERVIN J. BRANDT, a witness of lawful age, produced on behalf of the defendant, being duly sworn, did depose and say:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. What is your age? A. 39 years this fall.

Q. Where do you live? A. In the Beaver Creek District, at this time.

Q. What is your occupation? A. Assistant Teller and book-keeper in the First National Bank of Hagerstown, Mary-
(212) land.

Q. Who has charge of the dividend book of the First National Bank? A. The dividend book is in charge, really, of all the members of the Bank. Any one coming to sign for a dividend signs for whoever waits on them. Usually I wait on the majority of them who sign for dividends.

Q. Are you acquainted with and do you know the signatures of any of the stockholders of the First National Bank? A. Yes, I am acquainted with them. I would know them if I would see them.

Witness is here handed paper marked "Consent of Stockholders to Improvements," and he is asked to go over the paper and to state what signatures, if any, he knows on that paper, and to state the page upon which said signatures are found.

(Objected to by Mr. Neill.)

A. Page 1—Sarah Hagerman.

Q. State how you know that is Sarah Hagerman's signature? A. I can identify the signature by having her sign for her dividend in January 1909 on the dividend book of the bank.

(Objected to by Mr. Neill on the ground that the identification is not sufficient.)

Q. Have you seen her sign her name on other occasions?

(Objected to by Mr. Neill as leading and generally.)

A. I did.

Q. How often have you seen her sign her name? A. That is rather hard to answer, being there 22 years. I suppose I have seen her sign possibly that many times, or more. (213) Q. Where would she sign her name when you saw her sign? A. In the dividend book. Page 2, D. Frank Miller.

Q. What do you mean by D. Frank Miller? A. That is the signature of D. Frank Miller.

(Objected to by Mr. Neill.)

Q. What have you to say about that? A. I can say that it is his signature.

Q. What opportunities have you had for becoming acquainted with the signature of D. Frank Miller? A. In receipting for his dividends and paying him money for them.

(Objected to by Mr. Neill.)

Q. Have you or not ever seen him sign his name? A. I have.

Q. How often? A. I can not state that, because he has not been a stockholder so very long.

Q. More than once?

(Objected to as leading.)

A. Yes, more than once.

Q. Any others? A. Page 3, Mary I. Beckenbaugh.

Q. Whose signature is that? A. The signature of Mary I. Beckenbaugh.

(Objected to by Mr. Neill.)

Q. How do you know that is her signature?

(Objected to by Mr. Neill.)

A. By singing for her dividends and also signing checks in my presence.

(Objected to by Mr. Neill.)

Q. Can you state also how often you have seen Mary I. Beckenbaugh sign her name?

(Objected to by Mr. Neill.)

(214) At least ten times right in my presence.

Q. Who is the next one? A. Alfred A. Ankeney, page 5.
Q. Whose signature is that?

(Objected to by Mr. Neill.)

A. The signature of Alfred A. Ankeney.
Q. How do you know that is Mr. Ankeney's signature? A. By paying him his dividend also and having him receipt in the dividend book, also in signing checks, in my presence, endorsing and signing them.

(Objected to by Mr. Neill.)

Q. Can you state how often you have seen Mr. Ankeney sign his name? A. I suppose about 25 times—not less than that.

Q. Any others? A. J. D. Newcomer, page 5.
Q. What have you to say about J. D. Newcomer? A. That is J. D. Newcomer's signature.

(Objected to by Mr. Neill.)

Q. What opportunities have you had for becoming acquainted with Mr. Newcomer's signature?

(Objected to by Mr. Neill.)

A. In the last 23 years I have been acquainted with Mr. Newcomer as Cashier for the First National Bank until last spring; he has been signing drafts, signing and endorsing checks, etc., and quite a number of them go through my hands.
Q. Have you ever seen him sign his name? A. I have,
(215) thousands of times, I guess.
Q. Anyone else? A. Mrs. Lillian K. Brining, page 5. This is the signature of Mrs. Brining by Mr. E. S. Brining as her attorney.

(Objected to by Mr. Neill.)

Q. State what you know about it? A. I know that it is the signature of Mrs. Brining by Mr. Brining, her husband.

(Objected to by Mr. Neill.)

Q. How do you know that it is the signature of Mrs. Brining by her husband?

(Objected to by Mr. Neill.)

A. By Mr. Brining receipting for her devidend and also by endorsing checks on the back in her name.

Q. Have you ever seen him do that? A. I have.

Q. Where?

(Objected to by Mr. Neill.)

A. In the Bank.

Q. How often? A. 10 or 15 times, I suppose, at least.

Q. Who receipts for Mrs. Brining's dividend?

(Objected to by Mr. Neill.)

A. Mr. Brining—Ernest S. Brining.

Q. The next one? A. John G. Bower, page 6. That is Mr. Bower's signature.

(Objected to by Mr. Neill.)

Q. What opportunities have you had for learning Mr. Bower's signature? A. Through receipting for dividends.

(216) Q. Did you ever see him receipting for any dividends? A. I did.

Q. Where? A. In the First National Bank.

Q. How often have you seen Mr. Bower sign his name? A. I suppose five times, at least. On page 6, Francis H. Miller,

Q. What opportunities have you had for learning the signature of Francis H. Miller? A. The same opportunity; through the dividend book and also through signing checks of the Hagerstown Table Works.

Q. Whose signature is that?

(Objected to by Mr. Neill.)

A. Francis H. Miller's signature.

Q. How often have you seen him sign?

(Objected to by Mr. Neill as being a repetition.)

A. Eight or ten times, at least.

Q. Any others? A. Joseph S. McCartney, page 6.

Q. What opportunities have you had for knowing his signature? A. Through being cashier of the Second National Bank in the first place, and second. through receipting for dividends on our dividend book, in my presence.

Q. Whose signature is that?

(Objected to by Mr. Neill.)

A. The signature of Joseph S. McCartney.

Q. The next one? A. Ardella M. Newcomer, page 6.

(217) Q. What opportunities have you had for knowing her signature? A. The signing of checks and receipting for dividend. She signed them in my presence in the First National Bank.

Q. Whose signature is that?

(Objected to by Mr. Neill.)

A. The signature of Ardella M. Newcomer.

Q. Mr. Brandt, are you acquainted with and do you know any other signatures on that paper except those you have already mentioned? A. I do.

Q. Go on, then, mention them and describe them? A. Page 7, D. W. Barkman.

Q. What opportunities have you had for learning D. W. Barkman's signature? A. Through his signature on his checks and also receipting for dividends in my presence.

Q. Whose signature is that?

(Objected to by Mr. Neill.)

A. The signature of D. W. Barkman, Boonsboro.

Robert J. Shafer, page 7. I know his signature through receipting for dividends and also signing checks.

Q. Whose signature is that?

(Objected to by Mr. Neill.)

A. The signature of Robert J. Shafer, of Boonsboro.

Charles Thomas, page 7.

Q. What opportunities have you had for learning the signature of Charles Thomas? A. I know it through cashing checks over the counter and also receipting for his dividend in the dividend book.

(218) Q. Receipting to whom? A. Receipting on the dividend book in my presence.

Q. Whose signature is that?

(Objected to by Mr. Neill.)

A. The signature of Charles Thomas.

Myrtie B. Thomas.

Q. What opportunities have you had for learning the signature of Myrtie B. Thomas? A. Through receipting for her dividends in the Bank in my presence.

Q. In whose handwriting is the signature of Myrtie B. Thomas?

(Objected to by Mr. Neill.)

A. In her own handwriting.

W. D. Coffman.

Q. What opportunities have you had for learning the signature of W. D. Coffman? A. Thorugh receipting for dividends in the Bank in my presence and also signing checks.

Q. In whose handwriting is that signature?

(Objected to by Mr. Neill.)

A. W. D. Coffman's handwriting.

Dr. A. D. Baker.

Q. What opportunities have you had for becoming acquainted with the signature of Dr. A. D. Baker? A. Receipt for dividends in my presence, also endorsing checks.

Q. In whose handwriting is the signature of Dr. A. D. Baker?

(Objected to by Mr. Neill.)

(219) A. In the handwriting of Dr. A. D. Baker.

C. B. Taylor.

Q. What opportunity have you had for becoming acquainted with the signature of C. B. Taylor? A. By receipting for dividends in my presence.

Q. Do you know his signature?

(Objected to by Mr. Neill.)

A. Yes, that is his signature.

David E. Bowman.

Q. What opportunities have you had for learning the signature of David E. Bowman? A. By receipting for dividend, also signing checks.

Q. Where? A. In the First National Bank, in my presence.

Q. Do you know the signature of David E. Bowman.

(Objected to by Mr. Neill.)

A. I do; that is the signature of David E. Bowman.

Clara E. Bowman.

Q. What opportunities have you had for learning the signature of Clara E. Bowman? A. By her signing checks, receipting for dividends and endorsing checks, in my presence.

Q. Do you know her signature?

(Objected to by Mr. Neill.)

A. I do; it is the signature of Clara E. Bowman.

Henry Newcomer.

Q. Do you know Henry Newcomer's signature? A. I
(220) do.

Q. What opportunities have you had for learning his signature? A. By receipting for dividends in my presence and also signing checks in my presence.

Q. In whose handwriting is the signature of Henry Newcomer?

(Objected to by Mr. Neill.)

A. In the handwriting of Henry Newcomer.

W. M. Newcomer.

Q. Do you know the signature of W. M. Newcomer? A. I do.

Q. What opportunities have you had for becoming acquainted with the signature of W. M. Newcomer? A. I frequently saw his signature on the statement of the Bank, also in receipting for dividends, also on checks, in my presence.

Q. In whose handwriting is the signature of W. M. Newcomer?

(Objected to by Mr. Neill.)

A. In the handwriting of W. M. Newcomer.

Charles D. Coffman.

Q. Do you know Charles D. Coffman's signature? A. I do.

Q. What opportunities have you had for learning the signature of Charles D. Coffman? A. By his receipting for dividends, also having an account with us and signing checks in my presence.

Q. In whose handwriting is the signature of Charles D. Coffman?

(Objected to by Mr. Neill.)

(221) A. In the handwriting of Charles D. Coffman.

C. Estella Coffman.

Q. Do you know C. Estella Coffman's signature? A. Yes, sir.

Q. What opportunities have you had for learning her signature? A. By receipting for dividends, also cashing checks, seeing her sign her name to checks, drafts, etc.

Q. In whose handwriting is the signature of C. Estella Coffman?

(Objected to by Mr. Neill.)

A. In the handwriting of C. Estella Coffman.

Laura C. Chaney.

Q. Do you know Laura C. Chaney's signature? A. I do.

Q. What opportunities have you had for learning the signature of Laura C. Chaney? A. Receipting for dividends at the First National Bank in my presence.

Q. In whose handwriting is that signature?

(Objected to by Mr. Neill.)

A. In the handwriting of Laura C. Chaney.

J. A. Wisherd, page 11.

Q. Do you know J. A. Wisherd's signature? A. I do.

Q. What opportunities have you had for knowing it? A. Receipting for dividends in the dividend book of the First National Bank, in my presence.

Q. In whose handwriting is the signature of J. A. Wisherd?

(Objected to by Mr. Neill.)

(222) A. In the handwriting of J. A. Wisherd.

Bonna G. Vogel.

Q. Do you know the signature of Bonna G. Vogel? A. I do.

Q. What opportunities have you had for learning her signature? A. Receipting for dividends in the First National Bank in my presence.

Q. In whose handwriting is the signature of Bonna G. Vogel?

(Objected to by Mr. Neill.)

A. In the handwriting of Bonno G. Vogel.

Hattie B. Winter.

Q. Do you know the signature of Hattie B. Winter's? A. I do.

Q. What opportunities have you had for becoming acquainted with the signature of Hattie B. Winter? A. Receipt-

ing for dividends in the dividend book of the First National Bank, in my presence.

Q. In whose handwriting is that signature?

(Objected to by Mr. Neill.)

A. In the handwriting of Hettie B. Winter.

Isaac Ankeney, Jr.

Q. Do you know Isaac Ankeney's signature? A. I do.

Q. Has he any official connection with the First National Bank? A. He is one of the directors.

Q. What opportunities have you had for becoming acquainted with the signature of Isaac Ankeney, Jr.? A. Receipting for dividends and signing checks in my presence.

Q. In whose handwriting is the signature of Isaac Ankeney, Jr.?

(Objected to by Mr. Neill.)

(223) A. In whose handwriting of Isaac Ankeney, Jr.

C. A. Little.

Q. Do you know the signature of C. A. Little? A. I do.

Q. Has C. A. Little any official connection with the First National Bank? A. He is a director of the First National Bank, also attorney for the Bank.

Q. What opportunities have you had for knowing his signature?

(Objected to by Mr. Neill as being superfluous.)

A. By endorsing checks and signing for dividends.

Q. In whose handwriting is the signature of Charles A. Little?

(Objected to by Mr. Neill.)

A. In the handwriting of Charles A. Little.

George C. Pearson.

Q. Do you know the signature of George C. Pearson? A. I do.

Q. What opportunities have you had for knowing his signature? A. I first knew Mr. Pearson's signature through the School Board—saw his signature a number of times on the school records; also from signing for dividends in the First National Bank in my presence, also signing checks in my presence.

Q. In whose handwriting is the signature of George C. Pearson?

(Objected to by Mr. Neill.)

A. In the handwriting of George C. Pearson.

Q. The next one? A. George C. Pearson, Executor, in the same handwriting.

Q. Do you know the signature of George C. Pearson, Executor? A. I do.

(224)

(Objected to by Mr. Neill, unless it is shown for whom he is executor, or that he is executor.)

Q. Does George C. Pearson, Executor, hold any stock in the First National Bank?

(Objected to by Mr. Neill.)

A. He does.

Q. In what estate?

(Objected to by Mr. Neill.)

A. Executor of the Bowman estate.

Q. What Bowman? A. George Bowman.

Q. What opportunities have you had for knowing his signature as Executor of George Bowman? A. Receipting for dividends at the Bank, also signing checks as Executor of George R. Bowman.

Q. Where did he sign them? A. In my presence.

Robert B. French, page 13.

Q. Do you know the signature of Robert B. French? A. I do.

Q. What opportunities have you had for knowing his signature? A. Frequently see him sign checks in my presence in the bank to draw money and he also signed for dividends in my presence.

Q. In whose handwriting is the signature of Robert B. French?

(Objected to by Mr. Neill.)

A. In the handwriting of Robert B. French.

Rebecca Kemp, per George M. Kemp.

Q. Do you know the signature of Rebecca Kemp?

(225) (Objected to by Mr. Neill unless the authority of George M. Kemp to sign for Rebecca Kemp is shown.)

A. I know the signature of Rebecca Kemp per George M. Kemp.

Q. What opportunities have you had for knowing that signature? A. Signing of dividends in my presence.

Q. Who? A. George Kemp.

Q. How does he sign for dividends? A. Rebecca Kemp, per George M. Kemp.

Q. Who collects the dividends of Rebecca Kemp? A. George M. Kemp.

Q. Who is he? A. Son of William H. C. Kemp.

Q. What relation to Rebecca Kemp?

(Objected to by Mr. Neill.)

A. Rebecca Kemp is his mother. He is a son of Rebecca Kemp.

Mrs. Cora E. Hartle, page 14.

Q. Do you know the signature of Mrs. Cora E. Hartle? A. I do.

Q. What opportunities have you had for knowing her signature? A. Receipting for dividends, also signing papers in my presence in the First National Bank.

Q. In whose handwriting is the signature is Cora E. Hartle?

(Objected to by Mr. Neill.)

A. In the handwriting of Mrs. Cora E. Hartle.

W. D. Willson.

Q. Do you know the signature of W. D. Willson? A. I do.

(226) Q. Has W. D. Willson any official connection with the First National Bank? A. He is one of the directors.

Q. What opportunities have you had for knowing his signature? A. By receipting for dividends, signing checks; also signing statements.

Q. What statements? A. Government statements of the First National Bank, in my presence.

Q. In whose handwriting is the signature of W. D. Willson?

(Objected to by Mr. Neill.)

A. In the handwriting of W. D. Willson.

Q. Any others? A. C. D. Downs, page 15.

Q. Do you know the signature of C. D. Downs? A. I do.

Q. What opportunities have you had for knowing his signature? A. Receipting for dividends in my presence in the First National Bank.

Q. In whose handwriting is the signature of C. D. Downs?

(Objected to by Mr. Neill.)

A. In the handwriting of C. D. Downs.

Sarah Downs.

Q. Do you know the signature of Sarah Downs? A. I do.

Q. What opportunities have you had for learning her signature? A. Receipting for dividends in the dividend book of the First National Bank.

(227) Q. In whose handwriting is the signature of Sarah Downs?

(Objected to by Mr. Neill.)

A. In the handwriting of Sarah Downs.

J. Grason Steffey.

Q. Do you know the signature of J. Grason Steffey? A. I do.

Q. Has J. Grason Steffey any official connection with the First National Bank? A. He is one of the directors.

Q. What opportunities have you had for learning his signature? A. Receipting for dividends, signing. checks, papers, etc., in my presence.

Q. In whose handwriting is the signature of J. Grason Steffey?

(Objected to by Mr. Neill.)

A. In the handwriting of J. Grason Steffey.

Clyde B. Furst, page 19.

Q. Do you know the signature of Clyde B. Furst? A. I do.

Q. What opportunities have you had for knowing his signature? A. Receipting for dividends, signing papers. checks, etc., in my presence.

Q. In whose handwriting is the signature of Clyde B. Furst?

(Objected to by Mr. Neill.)

A. In the handwriting of Clyde B. Furst.

Cylde B. Furst, Executor of Catherine B. Bowman, deceased, page 20.

(Mr. Neill objects to any testimony as to Clyde B. Furst, Executor, unless it is first shown he is Executor and properly authorized to sign as such Executor.)

(228) Q. Do you know Clyde B. Furst's signature as Executor of Catherine B. Bowman? A. I do.

Q. What opportunities have you had for knowing that signature? A. Signing checks and drawing on the account as Executor of Catherine B. Bowman.

Q. Where? A. In the First National Bank, Hagerstown, Maryland, and in my presence.

Q. In whose handwriting is that signature?

(Objected to by Mr. Neill.)

A. In the handwriting of Clyde B. Furst, Executor.

Q. State whether or not Clyde B. Furst as Executor of Catherine B. Bowman holds any stock in the First National Bank?

(Objected to by Mr. Neill.)

A. He does.

Q. To what estate does it belong?

(Objected to by Mr. Neill.)

A. To the estate of Catherine B. Bowman.

CROSS EXAMINATION.

By H. F. WINGERT:

Q. Where was the Bank located from the time you began your service with it until very recently? A. It was located on West Washington Street until recently, 76 I think was the number.

Q. Would you recognize a photograph of the Bank building if you were to see it?

(Objected to by Col. Little on the ground that it is not
(229) a proper question on cross examination.)

A. Yes, I would.

(Witness is here shown "Exhibit Photograph" and is asked if he recognized the main building in it?

A. I recognize that as the First National Bank building to which I referred a moment ago.

Q. Do you recognize the building next to it on the right?

(Objected to by Col. Little on the ground that it is not proper cross examination but testimony in chief.)

A. I do.

Q. State what building it is? A. The house of John H. Kausler.

Q. Do you recognize the next building to the Kausler residence?

(Objected to by Col. Little on the ground that it is not proper cross examination, but testimony in chief.)

A. I do.

Q. State what building that is?

(Objected to by Col. Little on the ground that it is not proper cross examination, but testimony in chief.)

A. The Bennett building.

Q. State your opinion as to the age of the Kausler building?

(Objected to by Col. Little on the ground that it is not proper cross examination, but testimony in chief.)

A. I have known it ever since I have been in Hagerstown and that has been about 30 years.

Q. Is the First National Bank building, in the photograph, still standing as it appears there?

(Objected to by Col. Little on the ground that it is not proper cross examination, but testimony in chief.)

(230) A. No, sir.

Q. It has been torn down and destroyed almost to the level of the ground, hasn't it? A. Almost to the level of the ground, yes.

(Exhibit Photograph of the Bank is herein filed as part of this deposition.)

Q. Do you know anything about any information in regard to the provisions of the National Bank Act, with refer-

ence to the subject matter, possessed by the parties whose signatures you have testified to, at the time those signatures were made?

(Objected to by Col. Little on the ground of irrelevancy and that it is not proper cross examination but examination in chief.)

A. I do.

Q. State what that was? A. I understood it in regard to the building—that is, the provision you are talking about now—the National Bank Act in regard to a building suitable for banking purposes, convenience of the Bank, etc.

Q. Is that the whole of your answer to the aforegoing question? A. That is my answer.

Q. When you take the signatures of stockholders receipting for their dividends from time to time, do you make it a point to see that each stockholder so receipting gets the full amount of his dividend in current money of the United States?

(Objected to by Col. Little on the ground that it is irrelevant and not proper cross examination, but examination in chief.)

A. Some take money and some take credit. I could not answer that question unless I would answer it in that way—that those who want cash get current money of the United States and those who want credit get credit for it on their bank (231) account.

Q. When you pay the cash do you make it a point to see that the stockholder getting cash is satisfied that he is getting the full amount of his dividend before he leaves the Bank?

(Objected to by Col. Little on the ground that it is irrelevant and not proper cross examination, but examination in chief.)

A. I do.

Q. When you credit up to the stockholder his dividend on the books of the Bank, do you credit up the full amount to the last cent coming to him?

(Objected to by Col. Little on the ground that it is irrelevant and not proper cross examination, but examination in chief.)

A. I do.

179

Q. Do you, in your capacity in the Bank, have an opportunity to know what loans are made by the Bank to directors of the Bank?

(Objected to by Col. Little on the ground that it is irrelevant and not proper cross examination, but examination in chief.)

A. I do.

Q. State what loans or advances, if any, have been made to director C. M. Horst at any time since Mr. Mish has been president of the Bank, and what is the largest amount of any you know?

(Objected to by Col. Little on the ground that it is not proper cross examination but testimony in chief; and at this point also states that he desires to apprise the witness of his right to answer or refuse to answer the above question, as he (232) desires, inasmuch as it is a matter pertaining to the private and confidential affairs of the Bank.)

(Counsel for plaintiff protests against the attorney of the Bank and the members of the Board of Directors of the Bank and the President of the Bank prompting the witness, and charges the president of the Bank with prompting the witness and that it was inaudible to the counsel for the plaintiff and to the Commissioner.)

(The Commissioner here states that at this time he did not see or hear any prompting of the witness by the president of the Bank, or any official of the Bank, save the statement made by the counsel for the defendant, apprising the witness of certain alleged rights he possessed with regard to the answering of the question propounded by the counsel for the plaintiff, because, at the time, the Commissioner's eyes were not upon the witness or the president of the Bank.)

Q. State what loans or advances, if any, have been made to director C. M. Horst at any time since Mr. Mish has been president of the Bank, and what is the largest amount of any you know? A. That is not a proper question for me to answer in my capacity.

(At this point counsel for plaintiff states he proposed to show by this witness that at times since F. W. Mish has been president of the First National Bank director C. M. Horst

has had borrowed out of the First National Bank of Hagerstown, Maryland, large sums of money.)

(Counsel for defendant objects to the proffer of counsel for plaintiff on the ground that it is irrelevant, that it is not a proper cross examination but would be examination in chief.)

(The Commissioner at this point informed the counsel for the plaintiff that in order to have the aforegoing question answered it would be necessary to have sufficient facts certified to the United States Court, which would necessitate an adjournment of this case to some future day.)

Q. Do you refuse to answer further questions with reference to loans made by the Bank to the directors since F. W. (233) Mish became president of the Bank?

(Objected to generally, as irrelevant, and as not being proper cross examination but examination in chief.)

A. I do.

RE-EXAMINATION.

By Col. C. A. LITTLE:

(Defendant's counsel desires and asks permission to re-examin*ation* Mr. Brandt as to the signature of Charles McCauley, M. D., on page 5 of the paper designated "Consent of Stockholders to Improvements," and hands Mr. Brandt said paper and asks him the following questions:

Q. State whether or not you know the signature of Charles McCauley, M. D.? A. I do.

Q. What opportunities have you had for knowing or learning the signature of Charles McCauley, M. D.? A. Receipting for dividends and also from checks passing through my hands in the Bank, and from signing U. S. Government statements of the First National Bank in my presence.

Q. Has Charles McCauley, M. D., any official connection with the First National Bank, and if so, what is it? A. He is a director of the First National Bank.

Q. State in whose handwriting is the signature of Dr. McCauley, on page 5 of said paper.

(Objected to by Mr. Neill.)

A. The handwriting of Charles McCauley, M. D.

RE-CROSS EXAMINATION.

By H. F. WINGERT, Esq.:

(234) Q. Is it not a fact that Charles McCauley is present in the Commissioner's room at the time you are giving this testimony? A. Yes, he is present.

Q. How many shares of stock are opposite the name of Charles McCauley and for how many shares of stock has he signed? A. 794 shares.

(Witness is handed "Exhibit List of Stockholders and asked how many shares of stock Dr. McCauley has on that list:

(Objected to by Col. Little for the reason that the list of stockholders has been filed in evidence and speaks for itself.)

A. 382 in his own name, and as Committee he has 412, making 794 shares.

Q. Do you know if Charles McCauley had any authority for signing for any shares of stock as Committee at the time he made the signature to which you testified? A. Yes, he has authority to sign as Committee for Harry McCauley.

Q. How did he get it. A. He has authority from the Court to sign for him.

Q. What is the authority he has from the Court?

(Objected to by Col. Little on the ground that it is not cross examination but examination in chief.)

A. He has authority from the Court as Committee to sign for dividends, etc.

The question is again read to witness and he is asked if (235) that is the whole of his answer to the aforegoing question: A. He has authority from the Court as Committee for Harry McCauley, in charge of his stock, of course, to receipt and sign for anything, I suppose, that would be necessary.

Q. What information have you in detail with reference to the authority which C. M. McCauley had to make the signature to which you have testified heretofore?

(Objected to by Col. Little because not proper cross examination but examination in chief.)

A. What information I have is when the estate was settled up of Dr. McCauley's and Harry McCauley's father, he was appointed Committee to take charge of the stock of his brother Harry.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

NERVIN J. BRANDT.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

(636)

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, and others. } In Equity.

Hagerstown, Md., June 9, 1909.

*For Defendant.*

(Counsel for plaintiff requests the Commissioner to put in the record the statement reported to have been made by F. W. Mish, president, while Nervin Brandt, a witness, was testifying, as follows: "I admit that I prompted witness:" that this remark was not heard by counsel in chief for the plaintiff at the time it was made.)

(Counsel for the defendant objects to the insertion of the above in the record and denies that such admission was made by Mr. Mish.)

Personally appeared J. H. SNAVELY, a witness of lawful age produced on behalf of the defendant, being duly sworn did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. Where do you live? A. Near Downsville, Md.
Q. What is your age? A. 70 years.
Q. What is your occupation? A. I am living retired at presence.
Q. You were a farmer, were you not? A. Yes, have been farming all my life.
Q. Have you any connection with the Christian Church at Downsville? A. Yes, sir.

What is your connection therewith? A. I am a member (237) there and a deacon in the church.

Q. Who are the trustees of that church? A. Henry Snavely, Rufus Crim, Levi Beachley, Andrew Bower and myself.

Q. Do you remember of having a paper presented to you with reference to the improvements to be made by the First National Bank of Hagerstown? A. Yes, sir.

(Counsel for plaintiff objects to all testimony to be offered with reference to consent, as being irrelevant.)

Q. State whether or not the Christian Church of Downsville is the owner of any stock in the First National Bank? A. Yes, sir.

Q. Who holds and controls that stock?

(Objected to by Mr. Neill.)

A. I do to a certain extent. I draw the dividends and pay it over to the Church.

(Witness is here handed paper marked "Consent of Stockholders to improvements," and asked to look at page 12 thereof.)

Q. Is your signature on that paper?

(Objected to.)

A. Yes, sir.

Q. Which is it? A. The second one.

Q. Do you know any of the other signatures to that paper? A. Yes, sir.

Q. Which ones do you know? A. I know all of them.

(238) Q. Did you see them sign their names to that paper? A. No, sir, I did not see them sign.

Q. Did you see any of them sign? A. No, sir.

Q. Whose name stands first?

(Objected to.)

A. Rufus Crim stands first.

Q. Whose signature is that?

(Objected to.)

A. The signature of Mr. Crim.

Q. Do you know his signature? A. Yes.

Q. What opportunities have you had for knowing it? A. I have been dealing with him for some time and I have seen write his name a number of times.

(Objected to by Mr. Wingert as not being the best evidence that can be offered.)

Q. Do you know any of the other signatures? A. Yes, sir.

Q. Name them.

A. My son, H. S. Snavely. I know that is his signature.

Q. Is he here? A. Yes, he is present.

Q. How do you know his signature? A. I know it from seeing it, time and again.

Q. Is that the only way you know it, from just seeing it?

(Objected to.)

A. I have seen him write his name many times.

Q. Any others you know? A. Yes, here is Mr. Beach-
(239) ley's.

Q. Is Mr. Beachley here? A. Yes, sir.

Q. Whose signature is that? A. Mr. Beachley's.

Q. What opportunities have you had for knowing Mr. Beachley's signature.

(Objected to.)

A. I have been dealing with Mr. Beachley and I know his signature.

Q. Who else? A. Mr. Bowers.

Q. Is he here? A. No, sir.

Q. Where is he? A. In Downsville.

Q. Do you know Mr. Bower's signature? A. No. I do not.

### Cross Examination.

By Mr. H. F. Wingert:

Q. I see a cross mark here in the A. B. Bower's signature; has that any significance at all? A. I presume it has; I see H. E. Snavely was a witness to that mark, so presume it is all right.

Q. Then Mr. Bowers did not make his signature? A. No, he just made his mark.

Q. By what authority were these signatures attached to this paper? A. I presume because they were interested in the Bank.

(240) Q. These signatures you have testified to? A. Mr. Steffey waited on us and asked us to sign it and we did so.

Q. Is that the whole of your answer to the question? A. Through the interest of the Bank, the way I understand it.

Q. In other words, your signature and the others to which you have testified, were attached without consulting all the members of the congregation, were they not? A. No, sir, we had a meeting at the church and asked about it.

Q. Had you given any previous notice to the congregation that this meeting would be held and for what purpose it would be held? A. I can not answer that; I do not remember.

Q. What explanation or statement did Mr. Steffey make to you when he waited upon you with the request you have mentioned above? A. He said they wanted to make improvements to the Bank and wanted to know whether I was in favor of or opposed to it.

Q. Did Mr. Steffey say anything about the law in the case?

(Objected to by Col. Little as being irrelevant.)

A. I do not remember.

Q. Did he read to you the National Bank Act in reference to the provisions concerning the power of National Banks to hold real estate?

(Objected to by Col. Little as being irrelevant.)

A. I do not remember.

Q. Do you know that he did not read the National Bank Act, or any part of it, to you?

(241)

(Objected to by Col. Little as being irrelevant.)

A. I do not remember that.

Q. Do you know whether any explanation or information with reference to the power of the National Bank to hold real estate was made to the congregation of the church when the matter was laid before them, as you have testified above?

(Objected to by Col. Little as being irrelevant.)

A. I do not recollect whether it was or not.

Q. Do you yourself know anything about the National Bank Act concerning the power which it confers upon National Banks to hold real estate?

(Objected to by Col. Little as being irrelevant.)

A. I do not know that I do.

Q. Does the Church congregation referred to above know anything about the power of a National Bank to hold real estate?

(Objected to by Col. Little as being irrelevant.)

A. I do not know.

Q. Did Mr. Steffey, when he came to see you, show you the plans of the building which the directors of the First National Bank proposed to erect on their lot on West Washington Street? A. I don't remember that he did.

Q. Do you know how long the First National Bank has owned its lot on West Washington Street? A. I do not.

(242)

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

J. H. SNAVELY.

Personally appeared RUFUS CRIM, a witness of lawful age, produced on behalf of defendant, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col C. A. LITTLE:

Q. Where do you live? A. At Downsville, Maryland.

Q. What is your age? A. 58 years.

Q. What is your occupation? A. Carpenter.

Q. Have you any connection with the First Christian Church, Downsville? A. I have.

Q. What is it? A. I am a member of the church and one of the trustees.

Witness is here shown paper marked "Consent of Stockholders to improvements," page 12 thereof, and asked whether

or not he signed that paper? A. Yes, I acknowledge that as my signature.

Q. What is your full name? A. Rufus S. Crim.

(243) Q. By what authority did you sign that paper? A. Well this paper was presented to the Church—I learned Mr. Steffey had been around Downsville but I was away from home—and it was presented to the Church and explained, I guess, as well as we could explain it or thought it could be explained, in regard to the improvements to the First National Bank. We did not seem to have any objections to it and we signed it.

Q. Were you authorized by any one to sign it as trustee? A. Well, I don't know as I understand in regard to the authority. The paper was presented and we agreed to sign it.

Q. Presented to whom? A. The Church.

Q. What do you mean by the Church? Do you mean by that the congregation? A. That is the Scriptural name, I believe. I do not mean the building.

Q. Was any vote taken by the Church?

(Objected to by Mr. Neill as being leading and generally.)

A. Yes, it was put before the congregation and was agreed upon unanimously.

**Cross Examination.**

By H. F. Wingert:

Q. Who explained the matter to the congregation? A. Mr. Henry Snavely had this paper and read it to the congregation and explained it.

Q. Did he have with him a blue print or any other model of the building which the directors proposed to build, when he (244) read it to the congregation? A. Not that I can remember of now.

Q. Did Mr. Snavely read anything from the National Bank Act or explain the law with reference to the power of National Banks to hold real estate, when he presented the matter to the congregation?

(Objected to by Col. Little as being irrelevant.)

A. No, sir, he did not.

Q. Does the congregation itself know the power conferred upon National Banks to hold real estate?

(Objected to by Col. Little as being irrelevant.)

A. I do not. Probably they are not intelligent enough to know that, the understanding of the legal points; it would be a pretty deep question to go before a congregation.

Q. Can you yourself explain intelligently that clause of the National Bank Act which enables a National Bank to hold real estate?

(Objected to by Col. Little as being irrelevant.)

A. No, sir; and a good many of you lawyers probably can not do it.

Q. Have you ever read the National Bank Act?

(Objected to by Col. Little as being irrelevant.)

A. No, sir.

Q. Have you ever seen the blue print or specifications of the Bank building which the directors proposed to build?

(Objected to by Col. Little as being irrelevant.)

A. No, sir.

Q. Do you know how long the National Bank has owned (245) the lot on which it stood over there? A. No, sir.

Q. Why did you sign your name to this paper, which paper says, "which site the First National Bank has owned and occupied for more than fifty years—" why did you sign that paper? Look at the paper. A. I don't want to see it; I take it for granted it does. You used to be fairly straight in politics and I guess you are in this. I signed because I had no objections to the improvements whatever. And we agreed unanimously we had no objections; that is the reason I signed it. I like to see high buildings in Hagerstown. I don't come very often and have no objections to it.

Q. Where do you live? A. I live in Downsville.

Q. Does Downsville have any skyscraper buildings? A. No, and a good many other things they don't have.

Q. Then you signed this paper without knowing the National Bank Act, without seeing the plans of the building which the Bank proposed to build and without knowing how long the Bank owned the lot on which it proposed to erect the building?

(Objected to by Col. Little as being irrelevant.)

A. Yes, I signed it without knowing that.

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage

to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully (246) and at large in your answer. Answer.—I do not know anything further.

RUFUS S. CRIM.

Personally appeared H. S. SNAVELY, a witness of lawful age, produced on the behalf of the defendant, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. Where do you live? A. Nearly two miles north of Downsville, Md.

Q. What is your age? A. 45.

Q. Your occupation? A. Farmer.

Q. Have you any connection with the Christian Church in Downsville, Md.? A. Yes, sir.

Q. What is it? A. I am a member thereof.

Q. Anything else? A. Elder and Trustee.

Witness is here shown paper marked "Consent of Stockholders to Improvements," and his attention directed to page 12 thereof, and is asked whether he signed that paper? A. Yes, I signed that paper.

Q. What is your full name? A. Henry S. Snavely.

Q. Upon what authority did you sign that paper? A. Being an officer of the Church and having the consent of the congregation, and the paper being presented and asked for (247) such signature, I did so.

Q. Do you know A. B. Bowers? A. Yes, sir.

Q. Where does he live? A. At Downsville, Md.

Q. Is he connected in any way with the Christian Church at Downsville? A. Yes, sir.

Q. In what way? A. A member and trustee.

Q. Can he write his name? A. I believe not. I do not know just whether he can or not but he does not do so at times.

Q. Did he sign that in his own handwriting? A. No, sir, he made his mark.

Q. Did anyone witness his mark? A. I witnessed it.

Q. Is that your name signed below there as witness to it? A. Yes, sir.

Q. Who wrote his name for him? A. I did.

Q. Upon what authority did you write his name? A. He told me to.

Q. He made his mark, did he? A. Yes, sir.

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

Q. State why you signed your name to this paper? A. (248) Because the paper was presented asking that we sign it. I understand we have an interest in the Bank by having shares in it.

Q. Do you mean that you yourself individually have it? A. No, sir, simply the congregation.

Q. Why did you sign this paper if the congregation owned the stock? A. Being one of the trustees, I had that power.

Q. Had the power simply because you were a trustee? A. Because the congregation agreed that we should do so.

Q. Were you present when the congregation so agreed? A. Yes, sir.

Q. Were any minutes of the meeting kept when the congregation agreed to do so? A. Yes, sir.

Q. Was the vote recorded on the subject, do you know? A. Yes,—I can not just say positively; I am not sure; I think I will find it on the record.

Q. Do you know if the plans and specifications, or any other written matter showing the character of the building contemplated by the directors of the Bank, were presented to the congregation at this meeting when they gave their consent?

(Objected to by Col. Little as being irrelevant.)

A. No, sir, there was not anything of that kind.

Q. Was any information or explanation of the National Bank Act and the powers conferred upon National Banks to hold real estate given to the congregation or explained to them (249) at this meeting?

(Objected to by Col. Little as being irrelevant.)

A. No, sir.

Q. Did the congregation at this meeting when they gave their consent—or assent—really know the power that a National Bank has to hold real estate or to build six story buildings?

(Objected to by Col. Little as being irrelevant.)

A. I do not know, sir.

Q. Did you yourself know at this time what power a National Bank had to hold real estate?

(Objected to by Col. Little as being irrelevant.)

A. No, sir.

Q. Did you ever see the National Bank Act, or read it?

(Objected to by Col. Little as being irrelevant.)

A. No, sir.

Q. Do you know where the lot of the First National Bank is now on West Washington street? A. Yes, sir.

Q. How long has the First National Bank owned that lot? A. Longer than I know, I presume so. It has been there ever since I remember.

Q. Then you really do not know how long the First National Bank has owned the lot? A. No, sir.

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully (250) and at large in your answer. Answer.—I do not know anything further.

H. S. SNAVELY.

Personally appeared L. T. BEACHLEY, a witness of lawful age produced on behalf of the defendant, being duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. Where do you live? A. At Downsville, Md.

Q. What is your age? A. 68.

Q. What is your occupation? A. I am living retired now. I had been farming.

Q. Are you in any way connected with the Christian Church in Downsville? A. Yes.

Q. In what way? A. One of the trustees and a deacon.

Witness is here shown paper marked "Consent of Stockholders to Improvements," his attention directed to page 12 thereof, and is asked whether he signed that paper? A. Yes, I signed it.

Q. What is your full name? A. Levi T. Beachley. I didn't sign it at the meeting.

(251) Q. Why did you sign that paper? A. Well, I haven't any particular reason but I thought it was for the benefit of the money they had in the Bank.

Q. Do you know whether the congregation took any action in this matter? A. Yes, although I wasn't just there at the meeting.

(Objected to by Mr. Wingert because it is not the best testimony that can be offered.)

Q. You were not at the meeting? A. No, sir.

Q. Do you know of your own knowledge whether the congregation took any action in regard to this matter?

(Objected to by Mr. Neill.)

A. I think they did.

Q. Did you have that knowledge at the time you signed that paper? A. Yes, sir.

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

Q. How did you get that knowledge of which you speak? A. I heard they were going to have the meeting for that purpose but I did not get to the meeting; I was not well.

Q. You were not present? A. No, sir.

(All of Mr. Beachley's testimony is objected to by Mr. Wingert as being hearsay.)

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same (252) fully and at large in your answer. Answer.—I do not know anything further.

L. T. BEACHLEY.

Personally appeared LANDON KERNEY, a witness of lawful age produced in behalf of the defendant, being duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. Where do you live? A. 750 W. Washington street, Hagerstown, Md.

Q. What is your age? A. 25.

Q. Occupation? A. Foreman of Knitting Mills.

Q. What is your full name? A. Landon M. Kerney.

Witness is here shown paper marked "Consent of Stockholders to Improvements," page 17 thereof, and asked whether he has signed that paper? A. Yes, sir.

Q. In what capacity did you sign it? A. As Noble Grand Potomac Lodge No. 31 I. O. O. F.

Q. By what authority did you sign that paper? A. By the authority of the Lodge.

Q. What action, if any, was taken by the Lodge on that paper? A. There was a vote taken on the matter and the ma-
(253) jority voted in favor of signing it.

Q. Whose name is signed below there? A. Harry D. Burger.

Q. Is he here? A. Yes, sir.

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

Q. Explain why Potomac Lodge took the action to which you have testified? A. I suppose it was because they felt inclined to do it. What do you want to get at?

Q. I want to know what inspired or what prompted Potomac Lodge to pass this resolution and have you sign it? A. The resolution was submitted to the Lodge and they passed it; that was all.

Q. What raised the question which started the consideration of the proposition embodied in this resolution? A. It was simply submitted to the Lodge.

Q. Who submitted it to the Lodge? A. The recording secretary read it to the Lodge.

Q. Who is he? A. Harry D. Burger.

Q. Is he present? A. Yes.

Q. What explanation did the recording secretary make when he submitted this proposition to the Lodge? A. To the best of my knowledge, he simply read the paper you have in your hand.

Q. Did he show any plans or specifications or blue print
(254) of the improvements contemplated by the First National Bank to be erected on their lot on West Washington street? A. Not to my knowledge.

Q. Did he explain the National Bank Act or law governing the improvements which a National Bank may make to its property?

(Objected to by Col. Little as being irrelevant.)

A. No, sir, not to my knowledge.

Q. Did anyone else on this occasion explain to the Lodge the law on the subject and the powers of a bank in the premises?

(Objected to by Col. Little as being irrelevant.)

A. There was some discussion in the matter but I can not recall what took place.

Q. Do you yourself know the power of National Banks to hold real estate?

(Objected to by Col. Little as being irrelevant.)

A. No, sir. I am not familiar with the law.

Q. Did you ever read the National Bank Act?

(Objected to by Col. Little as being irrelevant.)

A. No, sir.

Q. Then the Potomac Lodge approved of the plans of the First National Bank without seeing them? A. They adopted that measure there.

Q. Was any explanation made to the Lodge on this occasion as to the wisdom of completing the contemplated improvements to the Bank?

(Objected to by Col. Little as irrelevant.)

A. The matter was simply discussed before the Lodge. I (255) don't recollect what took place in particular in a case of that kind.

Q. Are any of the directors of the First National Bank members of Potomac Lodge?

(Objected to by Col. Little as being irrelevant.)

A. Name them, then I can probably tell you.

Q. J. Grason Steffey, Walter D. Willson, Frank W. Mish, Charles A. Little— A. I am speaking to the best of my knowledge, and none of those you have mentioned are members of the Lodge.

Q. Is S. Lewis Lamkin a member of the Lodge? A. No, sir.

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters

in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

L. M. KERNEY.

Personally appeared HARRY D. BURGER, a witness of lawful age produced in behalf of the defendant, as being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. Where do you live? A. 149 S. Locust St., Hagerstown, Md.

Q. What is your occupation? A. Stock clerk at Updegraff's glove factory.

(256) Q. What is your age? A. 27.

Q. Are you in any way connected with the Potomac Lodge No. 31 Independent Order of Odd Fellows of Hagerstown? A. Yes, sir.

Q. What is that connection? A. I am a member of the Lodge and recording secretary.

Witness is here shown paper marked "Consent of Stockholders to Improvements," page 17 thereof, and asked whether he has signed that paper? A. That is my signature and the seal of the Lodge.

Q. In what capacity did you sign that paper? A. As recording secretary.

Q. Upon what authority, if any, did you sign that paper? A. It is my business to sign whenever a motion is passed by the Lodge.

Q. Was such a motion passed by the Lodge? A. It was.

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

Q. Were you present when the Lodge passed the Resolution to sign that? A. I was, yes.

Q. Was any of the plans, specifications or blue prints of the proposed building presented to the Lodge at this time? A. It was not presented to the Lodge that I saw. It may have been shown to some of the members but I personally did not see them.

(257) Q. Were the provisions of the National Bank Act governing the power of a National Bank to hold real estate read or explained to the Lodge meeting?

(Objected to by Col. Little as being irrelevant.)

A. The only thing I read was this paper we have signed. I read that before the Lodge.

Q. Did anybody else read anything before the Lodge? A. I didn't hear anything.

Q. Do you yourself know the provisions of the National Bank Act with reference to the power of a National Bank to hold real estate?

(Objected to by Col. Little as irrelevant.)

A. I do not.

Q. Do you know if the Lodge as a whole is familiar with the provisions of the National Bank act governing the power of a National Bank to hold real estate?

(Objected to by Col. Little as being irrelevant.)

A. I can not answer that. I do not know whether everybody knows it or any body knows it.

Q. Do you know who requested the Lodge to act in this matter? A. No request at all; the paper was on the desk, read by me and brought up for discussion.

Q. Do you know who put the paper on the desk? A. No, sir, I do not. I go there early and the papers are laid on my desk and I read them. I do not know exactly where it came from.

HARRY BURGER recalled by defense.

Witness is again shown paper marked "Consent of Stock-
(258) holders to Improvements," and referred to page 16 thereof, and asked whether he signed that paper? A. I did.

Q. In what capacity? A. As Chief Patriarch, presiding officer of the Encampment.

Q. Of what? A. Gilead Encampment No. 6 Independent Order of Odd Fellows.

Q. Upon what authority, if any, did you sign that paper? A. As presiding officer. The presiding officer, the secretary and treasurer sign papers.

Q. What action, if any, was taken by the Lodge on that paper? A. The matter was read and discussed and it was

voted that we grant the request, I think it is, that the stockholders make the improvements—that we would give our consent.

Q. Does that Lodge own any stock in the First National Bank? A. Yes, sir.

Q. How many shares? A. I can not tell you that exactly. Our treasurer is here.

(Counsel for plaintiff objects to the above question because there is a list of stockholders filed in the case, and counsel for the defendant withdraws the question.)

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

Q. What prompted Gilead Encampment to adopt the resolution to which you have just testified? A. That is something I can not answer, because I can not answer for everyone present. The resolution was there and read to the Lodge and accepted by the Lodge.

Q. State by whom it was read to the Lodge. Give the details. A. It was read to the Lodge and passed after a motion.

Q. State who read it to the Lodge? A. Our Chief Scribe, Bro. W. O. Diehl.

Q. He is present, is he? A. Yes, sir.

(259) Q. Did he upon reading this resolution, explain the law governing the power of National Banks to hold real estate and to make the improvements contemplated?

(Objected to by Col. Little as being irrelevant.)

A. If he did I didn't hear it.

Q. Did he present to Gilead Encampment any plans, specifications or blue print of the contemplated improvements to the bank? A. I didn't see them.

Q. Does Gilead Encampment as a whole know the law with reference to the power of National Banks to own and hold real estate?

(Objected to by Col. Little as being irrelevant.)

A. I do not know that; I can not answer.

Q. How does it happen that Gilead Encampment, according to the language of the Resolution, "approves of the plan and desire of said Board to erect upon the said property of the First National Bank a new and modern bank building with offices and all modern appliances," without having seen the

plans or without knowing the law on the subject. A. I cannot answer that because I do not know.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

HARRY D. BURGER.

Personally appeared WILLIAM O. DIEHL, a witness of lawful age produced in behalf of the defendant, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

(260) Q. What is your full name? A. William O. Diehl.

Q. Your age? A. 48.

Q. Your residence? A. 115 E. North St., Hagerstown, Md.

Q. What is your occupation? A. Shipping Clerk for the Hagerstown Grocery Company.

Q. Are you in any way connected with Gilead Encampment No. 6 Independent Order of Odd Fellows, Hagerstown, Md.? A. Yes, I am the recording scribe, commonly known as secretary.

Witness is here handed paper marked "Consent of Stockholders to Improvements," his attention called to page 16, and asked if he signed that paper? A. Yes, sir.

Q. In what capacity did you sign it? A. As recording scribe.

Q. Upon what authority, if any, did you sign that paper? A. Upon the action of the Encampment.

Q. What action was taken by the Encampment? A. That we endorse the resolution as submitted by the Board of Directors for the Improvement of the First National Bank.

Q. What resolution was submitted? A. I suppose the one that has the seal on it—the one in hand.

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

Q. Where did that resolution come from? A. This resolution was handed me by Mr. Mish. If I remember rightly,

Mr. Mish came up to the Subordinate Lodge on Tuesday night. It was when the matter was at fever heat. And he asked me to read it and asked me what I thought of it. I said it is a good thing. I said, "We want improvements; there is no use to let the money lay there dead—" or something similar to that—and as recording scribe I kept account for the Encampment and brought the matter up. I referred to my minutes (261) last evening and it was on March 16th it was submitted to the subordinate Lodge and March 18th to the Encampment. I think that is right.

Q. State any further remarks or information communicated by Mr. Mish when he handed you the resolution for consideration? A. I can not recall any other. Mr. Mish was very busy—I suppose he was—at least he seemed to be in a hurry, something like myself when I have something behind me. He seemed to get a hustle on him, as it were, that night.

Q. He didn't present you with a copy of the National Bank Act?

(Objected to by Col. Little as being irrelevant.)

A. No, sir.

Q. Did he ask you to explain to the Lodge the power of a National Bank to hold real estate?

(Objected to by Col. Little as being irrelevant.)

A. No, sir.

Q. Did he hand you any plans, specifications or blue print for the proposed building, to be shown to Gilead Encampment?

(Objected to by Col. Little as being irrelevant.)

A. No, sir.

Q. Did Gilead Encampment have any definite conception or knowledge of the complete plans and building which the bank proposed to erect? A. That I can not say. Individually, I had not.

Q. Explain how it happens that Gilead Encampment passed this resolution, which reads in parts as follows: "And approves of the plans and desire of the said Board to erect upon the said property of the First National Bank a new and modern bank building with offices and all modern appliances," when Gilead Encampment really did not know what kind of a building was to be erected? A. As far as that is concerned I can not answer for anyone but myself. I looked over the names of (262) the Board of Directors and I reasoned with myself like this: they were men of good, sound business judgment, in

my humble opinion, and they certainly would not go into this pell mell, or anything like that.

Q. Do you have any money lying idle in the First National Bank at the present time?

(Objected to by Col. Little as being irrelevant.)

A. No, sir, I do not.

Q. Do you know Mr. S. M. Bloom?

(Objected to as irrelevant.)

A. Yes.

Q. How long have you known him? A. I guess I have known him as long as I can remember. I was born and raised in town and his father used to run a cabinet shop on Potomac street. I have known him all my life, in fact.

Q. Mr. Bloom has had large business experience and is a man of large means, is he not?

(Objected to as irrelevant.)

A. In some respects he is.

Q. And worth hundreds of thousands of dollars?

(Objected to as being irrelevant.)

A. In the estimation of some people; I do not know.

Q. He has made nearly all the wealth he possesses, has he not?

(Objected to as being irrelevant.)

A. I can not answer; I do not know anything about that, I am not his private secretary.

Q. He inherited nothing from his father of consequence, did he? A. That I do not know.

In answer to General Interrogatory, witness says:

The morning after this matter was transacted at the Encampment was the first to my knowledge it was against the banking laws for a bank to own real estate—I went to work (263) in the morning and Charlie Rouskulp asked me, "What did you fellows do last night?" I said, "We voted for improvements," and he said, "They can't do it; there is a law against it." I said, "We did it innocently, that is all there is about it; it is done now."

General Interrogatory.—Do you know or can you state any other matter or thing that may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

WM. O. DIEHL.

Personally appeared J. WINGER DRAPER, a witness of lawful age produced on behalf of the defendant, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. Where do you live? A. 242 S. Potomac St., Hagerstown, Md.

Q. What is your full name? A. Joseph Winger Draper.

Q. Your age? A. 47.

Q. What is your occupation? A. Sell, erect and handle farm machinery.

Q. Are you in any way connected with Gilead Encampment No. 6 Independent Order of Odd Fellows? A. I am treasurer of that organization.

Witness is here shown paper marked "Consent of Stockholders to Improvements," page 16 thereof, and is asked whether he signed that paper? A. Yes, that is my signature.

Q. In what capacity did you sign it? A. As treasurer of Gilead Encampment No. 6.

(264) Q. Upon what authority did you sign it? A. Upon the authority given by the Lodge and vested in the officers of the Lodge.

Q. What action, if any, was taken by the Lodge upon that matter? A. Well, they voted to give their consent to the improvements as set forth by this paper. This paper was read before the Encampment and they voted upon it and the vote was an affirmative one, and of course the regular officers were authorized to sign this paper.

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

Q. Were you present when this resolution was adopted? A. Yes, sir.

Q. Did any one at this meeting read the provisions of the National Bank Act with reference to the power of National Banks to hold real estate?

(Objected to by Col. Little as being irrelevant.)

A. There was no paper read, except the one before you, in regard that paper.

Q. Were you informed at this meeting as to the power of a National Bank to hold real estate?

(Objected to by Col. Little as being irrelevant.)

A. No, sir, we hadn't any information on that subject at all.

Q. Were any plans, specifications or blue prints of the proposed improvements laid before the meeting at this time?

(Objected to as being irrelevant.)

A. No, sir.

Q. Then, according to the resolution of the Lodge, Gilead Encampment "approved of the plan and desire of said Board to erect upon the said property of the First National Bank a new and modern bank building with offices and all modern appliances," without knowing definitely what improvements were to be made and without knowing the law on the subject?

(Objected to as being irrelevant.)

(265) A. That is true in a general way and as far as I was individually concerned and some of the other members, I think Mr. Mish had spoken to them and given them some outline of what they proposed to do. There were no blue prints or specifications submitted.

General Interrogatory.—Do you know or can you state any other matter or thing that may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

J. WINGER DRAPER.

Personally appeared C. McP. SMITH, a witness of lawful age produced on behalf of the defendant, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. What is your full name? A. Claude McPherson Smith.

Q. Where do you live? A. 24 E. Washington St., Hagerstown, Md.

Q. What is your occupation? A. Printer for the Evening Globe.

Q. Are you in any way connected with Antietam Tribe No. 46 Improved Order of Red Men? A. Yes, sir, as presiding officer, sachem.

Witness is here shown paper marked "Consent of Stockholders to Improvements," page 4, and asked whether he signed that paper? A. Yes, that is my signature.

Q. In what capacity did you sign? A. As presiding officer, sachem.

Q. What is the presiding officer of the Tribe called? A. Sachem.

(266) Q. Upon what authority, if any, did you sign that paper? A. By a vote of the Tribe.

Q. Upon what did the Tribe vote? A. They voted to adopt the resolution that was given to the Tribe.

Q. Where is that resolution? A. The paper in my hand.

Q. How did the Tribe vote on that? A. Unanimous.

Q. Did you sign that paper in any other capacity? A. As trustee.

Q. Where is that? A. The second name.

Q. Then you signed the paper twice? A. Yes, as presiding officer and as trustee.

Q. Upon what authority, if any, did you sign as trustee? A. On the vote of the Tribe.

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

Q. State, if you know, how the resolution to which you have testified, got into the possession of Antietam Tribe 46 Improved Order of Red Men and what prompted said Tribe to adopt the

resolution aforesaid? A. The paper was handed to the Tribe, I believe, by Mr. Munson, Norman Munson.

Q. Where does he live? A. I do not know where he lives.

Q. Does he live in Hagerstown? A. Yes, sir.

(Question re-read to witness by stenographer.)

A. The only way I can answer is that I suppose the Tribe saw fit to adopt it.

Q. By whom was the resolution presented to the Tribe? A. It was handed in by Mr. Munson and it was read by secretary Frank Wroe.

(267) Q. Is he present? A. Yes.

Q. Were you present at this meeting? A. Yes, sir.

Q. Were any plans, specifications or blue prints of the proposed improvements presented to Antietam Tribe at the time this resolution was adopted, showing the proposed improvements? A. No, sir.

Q. Was the National Bank Act governing the subject of the power of a National Bank to hold real estate read to the Tribe?

(Objected to as being irrelevant.)

A. No, sir.

Q. Did Antietam Tribe at this time, to your knowledge know the power of a National Bank to hold real estate?

(Objected to as being irrelevant.)

A. I do not know whether they did or not.

Q. Did anyone explain to the congregation of Antietam Tribe, when it adopted this resolution, the law on the subject?

(Objected to as being irrelevant.)

A. No, sir.

Q. Then, as I understand you, Antietam Tribe No. 46 approved and expressed its approval and concurrence in the plans and purposes of the First National Bank of Hagerstown in the erection of a new bank and office building, without the plans and specifications of the building before them, and without the law with reference to the power of a National Bank to hold real estate; is that true?

(Objected to by Col. Little as being irrelevant.)

A. As far as I know they did, yes.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

C. McP. SMITH.

(268) Personally appeared FRANK M. WROE, a witness of lawful age, produced in behalf of the defendant, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. What is your full name? A. Frank M. Wroe.
Q. Where do you reside? A. S. Prospect St., extended, Hagerstown, Md.
Q. What is your age? A. 52.
Q. What is your occupation? A. Table builder.

Witness is here shown paper marked "Consent of Stockholders to Improvements," page 4 thereof, and asked whether he signed that paper? A. I did.

Q. In what capacity? A. Chief of Records—corresponding secretary.
Q. Of what? A. Antietam Tribe No. 46 Improved Order of Red Men.
Q. Upon what authority, if any, did you sign that paper? A. The authority of the Tribe; by vote of the Tribe.
Q. What action, if any, was taken by the Tribe upon that paper? A. The Tribe voted to adopt the resolution as presented.
Q. What resolution? A. The resolution I have in hand. They voted to adopt it unanimously.

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

Q. State what you know as to how this resolution happened to be presented to Antietam Tribe No. 46? A. On our regular meeting night, March 22nd, Past Sachem Norman Munson came into the Lodge room and asked special privi-

(269) lege, as he wanted to retire early, to offer a certain paper to the Lodge for their action. The paper you have in hand there was given to him and he was requested to take it before the Tribe and have action taken upon it if they saw fit. The paper was laid upon my desk. It was granted. The said resolutions were read before the Tribe and it was regularly moved and seconded at that stated meeting that the resolution as offered would be adopted. After discussion there was a vote taken and it was adopted with instructions that the seal of the Tribe be attached thereto, with the proper officers, be attached to it.

Q. This resolution came to the Tribe already prepared, is that a fact? A. Yes, by Past Sachem Munson—handed by a member of the Tribe. I do not know who prepared it or anything about that.

Q. At this meeting were any plans, specifications or blue prints of the proposed improvements presented for consideration? A. No, sir, there were not.

Q. At this meeting was the National Bank Act pertaining to the subject read, or any explanation made with reference to the power of the directors to make the contemplated improvements?

(Objected to as being irrelevant.)

A. Not to my knowledge.

Q. Then Antietam Tribe No. 46 resolved as follows: "Being a stockholder, approves and does hereby express its approval and concurrence in said plans and purposes of the said First National Bank of Hagerstown, Maryland, in the erection of said new bank and office building," without knowing definitely the plans or the law on the subject—is that a fact?

(Objected to by Col. Little as irrelevant.)

A. Not seeing the plans—no, we didn't have any plans. I can not give my testimony as to some of the remarks made in the debate. Such matters were debated upon by the organization, what was told them, I suppose as to what kind of building was to be erected, etc., I suppose that would be irrelevant.

(270) Q. Where does Mr. Munson live? A. Mulberry St., Hagerstown.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the mat-

ters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

FRANK M. WROE.

Personally appeared E. E. DYER, a witness of lawful age, produced on behalf of the defendants, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. What is your full name? A. Elmer E. Dyer.

Q. Your age? A. 48.

Q. Residence? A. 302 W. Washington St., Hagerstown, Md.

Q. What is your occupation? A. Butcher and storekeeper.

Q. Are you in any way connected with Antietam Tribe No. 46, Improved Order of Red Men? A. Member and Chairman Board of Trustees.

Witness is here shown paper marked "Consent of Stockholders to Improvements," his attention called to page 4 thereof, and he is asked whether he signed that paper? A. Yes, that is my signature.

Q. In what capacity? A. As member and chairman of the Trustees.

Q. Upon what authority, if any, did you sign that paper? A. It happened that the night those resolutions were presented I was absent and these papers were brought to me by Mr. Steffey—to my store, requesting that I sign it, and I did (271) it only because I saw the balance of the trustees had signed.

Q. State whether or not you approved of the contemplated improvements? A. I did not and I do not now approve of them.

Q. But you signed with the majority. A. Simply because they had signed and the resolution had passed the organization.

Q. You signed simply in your official capacity and personally you are not in favor of the improvements? A. No, sir, I am not.

CROSS EXAMINATION.

By H. F. WINGERT:

Q. As I understood, you were not present at the meeting of Antietam Tribe No. 46? A. No, sir, I was not.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

E. E. DYER.

Personally appeared J. E. DOWNIN, a witness of lawful age, produced on behalf of the defendant, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. What is your full name? A. John E. Downin.
Q. Where do you live? A. 262 S. Locust St., Hagerstown, Md.
Q. Your age? A. 43.
272) Q. What is your occupation? A. Assembler at the Crawford Automobile Works.
Q. Are you in any way connected with Antietam Tribe No. 46 Improved Order of Red Men? A. I am a trustee.

Witness is here shown paper marked "Consent of Stockholders to Improvements," and his attention called to page 4 thereof, and he is asked whether he has signed that paper?

A. I signed that paper.
Q. In what capacity? A. As a trustee.
Q. Upon what authority, if any, did you sign that paper? A. There was a motion made and it was seconded and passed; and the motion was carried by the Lodge that would give our consent to the improvements at the bank.
Q. Were you present? A. I was present.
Q. And upon that authority you signed? A. Then it was the duty of the trustees to sign after it was passed by the Order.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to this cause or either of them or that may be material to the subject of this your examination or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

J. E. DOWNIN.

Personally appeared EARL TROUP, a witness of lawful age, produced on behalf of the defendant, being duly sworn, did depose and say as follows:

(Counsel for plaintiff objects to the calling of Mr. Troup as a witness for the defense.)

(Counsel for defendant states Mr. Troup is wanted as a witness to testify in chief on behalf of the defendants.)

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

(273) Q. What is your full name? A. Joshua Earl Troup.

Q. Where do you live? A. 422 S. Prospect St., Hagerstown, Md.

Q. What is your age? A. 27.

Q. What is your occupation? A. Not at present employed.

Witness is here shown paper marked "Consent of Stockholders to Improvements," and his attention called to page 9 thereof, and he is asked to look at the name of Lida B. Troup on said paper, and is asked whose signature that is?

(Objected to because not the best testimony that can be offered.)

A. That is her signature.

Q. Whose signature? A. The signature of my mother, Lida B. Troup.

Q. Do you know her signature? A. I do.

Q. What opportunities have you had for knowing it? A. I often have seen her write it and have seen it written.

Q. Did you see her write this? A. I was present. I don't know as I was just watching her.

Q. Whose is the next signature? A. Rhoda B. Troup, my sister.

Q. What opportunities, if any, have you had for learning to know her signature? A. Often saw her write it.

Q. Did you see her sign this paper. A. I was present.

Q. Whose signature is that? A. That is her signature.

Q. What other signature is there that you know? A. My (274) own.

Q. How have you signed it? A. J. Earl Troup.

Q. Anybody else? A. That is all.

CROSS EXAMINATION.

By H. F. WINGERT:

Q. Where do Lida B. Troup and Rhoda B. Troup live? A. 422 S. Prospect St., Hagerstown, Md.

Q. About how far is that from the Commissioner's Office, where we are taking testimony? A. Something over a quarter of a mile, possibly nearly half a mile.

Q. Are they at home at the present time? A. I think they are.

Q. How did this paper to which you have attached your signature happen to come into your hand? A. By Mr. Mish.

Q. Did Mr. Mish explain to you the law on the subject of National Banks and the power to make these contemplated improvements?

(Objected to by Col. Little as being irrelevant.)

A. I think not.

Q. Did he show the plans and specifications or the blue print of the contemplated improvements? A. He did not.

Q. Do you remember, on one occasion after you attached your signature to this paper, of having a conversation with Lewis B. Wingert, the plaintiff in this case, down at the Baldwin House, on the subject of the contemplated improvements, in which you stated to him that if you had it to do over again you would not have signed this paper?

(Objected to by Col. Little.)

A. I remember I made that statement.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to this cause or either of them or that may be material to the subject of this your examination or the matters in question be-

tween the parties? If yea, state the same fully and at large (275) in your answer. Answer.—I do not know of anything further.

J. EARL TROUP.

Hagerstown, Md., June 10, 1909.

Continued taking testimony in behalf of defendant.

(Counsel for plaintiff objects to all testimony offered pertaining to consent of stockholders to improvements.)

Personally appeared GEORGE F. BURKHART, a witness of lawful age, produced on behalf of the defendant, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. What is your full name? A. George F. Burkhart.
Q. What is your age? A. 68.
Q. Residence? A. 126 N. Potomac St., Hagerstown, Md.
Q. What is your occupation? A. Have none, and haven't had for the last eight years.
Q. Who is Sophia B. C. Burkhart? A. My wife.

Witness is here shown paper marked "Consent of Stockholders to Improvements," page 8 thereof, and asked whether Sophia B. C. Burkhart signed that paper?

(276) A. Yes, sir.
Q. Do you know Mrs. Burkhart's signature? A. Yes, sir.
Q. What opportunities have you had for knowing her signature? A. At different times writing letters pretty nearly for the last 39 years. I saw her write this.
Q. Whose signature is that, then? A. Sophia B. C. Burkhart's.

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

Q. State where Mrs. Burkhart was when she signed this? A. Up in the parlor in our home.
Q. And you were present? A. Yes, sir.
Q. And who presented the paper? A. Mr. Mish.
Q. Came to the house, did he? A. Yes, he was there twice, I think.

Q. Were you at home both times when he came there? A. Yes, sir.

Q. Did you hear all the conversation on the part of Mr. Mish on his visits there, all he said? A. Yes.

Q. Please state what explanations and suggestions Mr. Mish made with reference to the subject matter of signing this paper on each visit when he came to the house, as near as you remember it? A. The representations he made to me were that the wants and needs of the Bank were for a new building and they thought it would be a proper thing to do to put up a building that would furnish revenue to the Bank as well as furnish them additional accommodations that were thought to be needed.

Q. Was Mrs. Burkhart present when he made these suggestions? A. Not at the first meeting but she was at the second (277) one, when she signed her name. I explained to Mr. Mish that she was unwell on his first visit and that I would explain to her as well as I could and that he should come some other time, which he did, and on his second visit the paper was signed by Mrs. Burkhart.

Q. You heard all the conversation between Mr. Mish and Mrs. Burkhart on the second visit, then? A. Yes, there was not much of it.

Q. Did Mr. Mish explain to Mrs. Burkhart anything about the National Bank Act?

(Objected to by Col. Little as being irrelevant.)

A. No, sir.

Q. Did he show to Mrs. Burkhart any specifications, plans or blue prints of the proposed improvements? A. No, sir.

Q. Are you sure you remember all the conversation that Mr. Mish had at that time with Mrs. Burkhart? A. The subject matter, yes.

Q. Do you remember that Mr. Mish explained to Mrs. Burkhart that the income of her stock, or dividends on her stock, would be increased by the building of the proposed new bank building and that Mrs. Burkhart replied to Mrs. Mish, "That is all very well, Mr. Mish, but I prefer that that bank building remain just as it is," or words of a similar import? A. Yes.

Q. Is it not a fact, Mr. Burkhart, that Mrs. Burkhart was inclined at first to refuse to sign Mr. Mish's paper, and that you explained to her that inasmuch as many other stockholders had signed Mr. Mish's paper, that it would look peculiar or odd or unusual on her part if she would refuse finally to sign his paper—or words of a similar import? A. It is true that at first

she was opposed to the erection of a new building, but she did not object because other people had signed or sign because other (278) people had signed.

Q. State how long you were deputy clerk of the court here? A. 36 years, in round numbers.

Q. You are a well posted man on business matters generally in connection with Hagerstown? A. That is going too far. I have a limited idea.

Q. Do you know Mr. S. Martin Bloom?

(Objected to by Col. Little as being irrelevant.)

A. Yes, sir.

Q. How long have you known him?

(Objected to as irrelevant.)

A. Since 1865.

Q. His place of business is close to your home, is it not? A. Yes, three or four doors.

Q. Isn't Mr. Bloom reported to be a man of considerable means? A. Yes.

Q. Have you ever heard his wealth estimated?

(Objected to as irrelevant.)

A. Yes.

Q. Give the figures as you have heard them?

(Objected to as being irrelevant and hearsay.)

A. It is very wide, Mr. Wingert.

Q. Give them? A. From $100,000 to a half million.

Q. What was Mr. Bloom probably worth when you knew him in 1865?

(Objected to as irrelevant.

A. I think he was in rather humble circumstances in 1865.

Q. Has he made his money which he possesses at present or has he inherited it?

(Objected to as irrelevant.)

A. I think he has made it by his own efforts.

Q. Do you know that Mr. Bloom was at one time president of the First National Bank?

(Objected to as irrelevant.)

(279) A. Yes.

Q. Is Mr. Bloom's judgment on business matters generally considered to be of some account?

(Objected to as being irrelevant.)

A. Yes, by some people and not by others.

Q. Do you know if Mrs. Burkhart, at the time she signed the paper presented by Mr. Mish, was acquainted with the provisions of the National Bank Act pertaining to the power of National Banks to hold real estate?

(Objected to as being irrelevant.)

A. I don't think she knew anything about it. I am sure I don't.

Q. Is it not a fact that the present building of the First National Bank, before it was torn down, was one of the show buildings on West Washington street between the Square and Jonathan street? A. I never regarded it as much of a show building.

Q. How did it compare with the other buildings along that street? A. Fairly well. Not very well with the Hamilton House.

Q. About what is the population of Hagerstown? A. I think a conservative estimate would be $18,000.

Q. Has Mr. S. M. Bloom done any extensive building, to your knowledge, in the last ten years?

(Objected to by Col. Little as being irrelevant.)

A. I do not recall any.

General Interrogatory.—Do you know or can you state any other matter or thing that may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know of anything further.

GEO. F. BURKHART.

Personally appeared WOLFGANG NEWCOMER, a witness of lawful age, produced on behalf of the defendant, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

(280) Q. What is your full name? A. Wolfgang M. Newcomer.

Q. Your age? A. 53.

Q. Your residence? A. 36 E. Franklin St., Hagerstown, Md.

Q. What is your occupation? A. I haven't any regular or permanent occupation.

Q. Are you in any way connected with the First National Bank of Hagerstown, Maryland? A. A stockholder and director.

Q. Did you call upon any of the stockholders of the First National Bank to get their views with reference to the proposed improvements to the First National Bank? A. I did.

Witness is here shown paper marked "Consent of Stockholders to Improvements," page 7 thereof, and is asked to state what he knows about the signatures on that page?

(Objected to by Mr. Neill.)

A. I am not familiar with the signatures, yet I saw them sign them.

Q. What do you mean by saying that you are not familiar with their signatures? A. I am not accustomed to seeing their signatures but I saw each and every one sign the petition.

Q. On what page? A. Page 7.

Q. Were they then signed in your presence? A. Yes.

Q. What was done when you visited each of these people? A. I presented the petition and they read the heading of it and they voluntarily signed the petition.

Q. In your presence? A. In my presence.

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

(281) Q. Where did you get the petition at the head of the paper to which you obtained the signatures testified to by you? A. I got it at the First National Bank.

Q. What individual or individuals connected with the First National Bank gave it to you or handed it to you? A. I think Mr. Mish, the president.

Q. Did you take this paper around to the different people, to their houses, and find them wherever you could, to obtain their signatures? A. Yes, sir.

Q. Did you take with you when you went to see the persons whose signatures are here attached a copy of the National Bank Act?

(Objected to by Col. Little as being irrelevant.)

A. I did not.

Q. Did you explain to the people who signed this paper the provisions of the National Bank Act pertaining to the power of National Banks to hold real estate?

(Objected to as being irrelevant.)

A. I did not.

Q. Did you make any explanations to them of the legality of the contemplated improvements?

(Objected to as being irrelevant.)

A. In a general way—some of them.

Q. Is that the whole of your answer to the foregoing question? A. Yes, that is a full answer.

Q. Did you take with you when you presented this paper, or present to the signers, any plans or specifications or blue prints of the contemplated improvements.

(Objected to as being irrelevant.)

A. I did not.

Q. How long have you been a director of the First National
(282) Bank? A. 15 years.

Q. Do you know John D. Newcomer? A. Yes.

Q. What is his position in the Bank? A. Vice-President now.

Q. Has he any other position? Does he do any work in the Bank? A. Yes.

Q. He is in the Bank daily, as a rule? A. I think so. I am not there.

Q. Has a desk in the Bank and does work there? A. Yes.

Q. Are you related to John D. Newcomer in any way? A. Yes.

Q. State the relationship? A. I am his nephew.

(At this point Col. Little states that he objects to all the foregoing testimony in relation to John D. Newcomer, as being irrelevant.)

Q. Who is Mr. Ezra Newcomer? A. My brother.

Q. Is he in any way connected with the Bank?

(Objected to.)

A. Only a clerical position.

Q. How long has he been connected with the Bank?

(Objected to.)

A. Perhaps 25 or 30 years.

Q. How long has John D. Newcomer been connected with the Bank?

(Objected to as being irrelevant.)

A. Nearly 40 years, I suppose.

Q. Is the Newcomer family of which you are a member, related to or connected in any way with the McCauley family, of whom Charles McCauley, a director of this Bank, is a member?

(Objected to by Col. Little as being irrelevant.)

A. No, sir.

(283) Q. Who is Mr. Samuel Emmert? A. A gentleman who keeps a hardware store.

Q. How is the hardware store located with reference to the First National Bank? A. It is southeast or diagonally across the street.

Q. Are you acquainted with the height of Mr. Emmert's store? A. Not exactly.

Q. About how many stories is Mr. Emmert's store?

(Objected to as being irrelevant.)

A. Three, to the best of my knowledge.

Q. Do you know that Mr. Emmert has extended his store room back to the alley, a distance of about 240 feet?

(Objected to as being irrelevant.)

A. Yes.

Q. And that the height of the rear building does not exceed three stories, or something like that?

(Objected to as being irrelevant.)

A. I can not tell you.

Q. Is Samuel Emmert a director of the First National Bank at the present time? A. No, sir.

Q. Has he been a director of the Bank during the 15 years you have been a director? A. Yes, he was for several years.

Q. Have you ever heard, or do you know, how it happens that Mr. Emmert is not a director of the Bank now?

(Objected to as being irrelevant.)

A. I can not tell you. He resigned.

Q. He did own stock in the Bank at the time he was a director in the Bank? A. Oh, yes.

(284) Q. Do you know Mr. Harry K. Powles? A. Yes, not intimately acquainted with him but I know him.

Q. Do you know also that he is one of the principal clerks in Mr. Samuel Emmert's hardware store. A .Yes.

(Objected to as being irrelevant.)

Q. Do you or do you not know that Mr. Harry K. Powles is a son-in-law of Mr. S. Lewis Lamkin, married to his daughter.

(Objected to as being irrelevant.)

A. I know that.

Q. And that Mr. Lamkin is the same Lamkin that has the contract or is employed to tear down the present bank building and erect another building? A. Yes.

Q. How long have you known S. M. Bloom? A. Perhaps 20 years.

Q. You were a director of the First National Bank during the whole time Mr. Bloom was *present,* were you not? A. Not during the whole time.

Q. About how long? A. About 12 or 13 years. Mr. Bloom was in the Bank before I was a director.

Q. I want to know how long you served as director while Mr. Bloom was president? A. About 13 years, I guess.

Q. Do you consider Mr. S. M. Bloom a man of good judgment on business matters generally?

(Objected as being irrelevant.)

A. I do.

Q. Do you know W. L. Hammond? A. Yes, sir.

Q. State who he is, what his business is, and any other information you may happen to have about him?

(Objected to as being irrelevant.

(285) A. I only know that he was Mayor of the town.

Q. Do you know that he was also, before he became Mayor of the town, Tax Collector of the town?

(Objected to as being irrelevant.)

A. Yes.

Q. Do you know also that Mr. Hammond was Tax Collector of the town while Mr. F. W. Mish, president of the First National Bank, was Mayor of the town?

(Objected to as being irrelevant.)

A. I do not remember but I think he was.

Q. When are the regular meetings of the directors of the First National Bank held—what day and hour? A. On Tuesday at 10 o'clock.

Q. And there is only one regular meeting each week? A. One regular meeting each week.

Q. Who is Mr. Louis Rose? A. He is a gentleman in business on North Potomac street, a shoe dealer.

Q. Do you know if Mr. Rose has done any building recently?

(Objected to as being irrelevant.)

A. Yes.

Q. State where? A. He built a house on East Franklin street, a double house, also one on East Avenue.

Q. About how long ago did he build the building where Mrs. A. Rose and daughter's shoe store is located, as near as you can remember?

(Objected to as being irrelevant.)

A. It may have been ten years ago.

Q. What is the height of that building, and the other buildings he has built?

(Objected to as being irrelevant.)

A. Three stories, I think.

(286) Q. Was Mr. Louis Rose a director in the First National Bank any time since you have been a director there?

(Objected to as being irrelevant.)

A. Yes, sir.

Q. Is he a director of the First National Bank at the present time?

(Objected to as being irrelevant.)

A. No, sir.

Q. Do you know John W. Stonebraker? A. Yes, sir.

Q. Does he own any real estate, to your knowledge, on West Washington Street, between the Square and Jonathan Street, or on the Public Square, or on Potomac Street between Franklin Street and Antietam Street?

(Objected to as being irrelevant.)

A. Not to my knowledge, no—I am not acquainted.

Q. Do you know if William L. Hammond owns any real estate on the streets within the limits above mentioned?

(Objected to as being irrelevant.)

A. I do not know of any.

Q. Who is Mr. Isaac Ankeney, a director of the Bank, and where does he live? A. He lives in the Clearspring District, or in the town of Clearspring. Q. Do you know anything about his occupation? A. He is a progressive farmer.

Q. Who is Francis H. Miller, a director? A. A gentlemen who is connected with the Table Works—the firm of Bower & Miller.

Q. Is the Table Works, under the firm of Bower & Miller, an enterprise of considerable proportions, or a small affair?

(Objected to as being irrelevant.)

A. An enterprise of considerable proportions, I think.

Q. Isn't it generally supposed that Mr. Francis Miller is a man of considerable means?

(Objected to as being irrelevant.)

(287) A. I have never heard any estimation in regards to his means.

Q. Do you know of any property which Mr. Francis Miller owns within the corporate limits of Hagerstown?

(Objected to as being irrelevant.)

A. Only the place he resides on Antietam Street.

Q. Does Mr. Francis H. Miller own any property on Washington Street within the limits mentioned above, or on Potomac Street within the limits mentioned above, or on the Public Square?

(Objected to as being irrelevant.)

A. I do not know.

Q. About how long have you known Dr. Charles McCauley, a director? A. About ten years.

Q. Have you ever heard any intimation as to about how much stock Dr. Charles McCauley has in the First National Bank? A. Individually?

Q. Yes, individually or in any other way? A. I think between 800 and 900 shares.

Q. Do you know where Dr. McCauley lives and does he own the property where he lives?

(Objected to as being irrelevant.)

A. Yes, sir.

Q. State where he lives? A. On South Potomac St.

Q. Does Dr. McCauley, to your knowledge, own any real estate within the limits on Washington Street and on Potomac Street and on the Square, referred to above?

(Objected to as being irrelevant.)

A. Not to my knowledge.

Q. Do you, or do you not know that Dr. McCauley has money and loans considerable on mortgage for himself and in other ways?

(Objected to as being irrelevant.)

A. I am not acquainted with his business.

Q. Is that the whole of your answer to the foregoing question? Do you understand the aforegoing question?

(288)

(Question read to witness.)

A. I have nothing further to say.

Q. Who is J. Grason Steffey, a director? A. He is a gentleman who lives in Williamsport and is connected with the firm of Steffey and Findlay in the coal business.

Q. Who is Findlay, of the firm of Steffey and Findlay? A. Judge Findlay.

Q. Can you give any further information about Judge Findlay?

(Objected to as being irrelevant.)

A. I can not.

Q. Who is Col. Charles A. Little? A. A gentleman and an attorney.

Q. Is there any relation or bond of consequence between Col. Charles A. Little, the attorney, and Judge Findlay, a member of the firm of Steffey and Findlay?

(Objected to as being irrelevant.)

A. I think so.

Q. State what it is? A. He is a son-in-law of Judge Findlay.

Q. Do the loans made by the First National Bank come under your observation as a director?

(Objected to as being irrelevant.)

A. I am familiar with them in a general way.

Q. Do any of the directors borrow money out of the First National Bank on note?

(Objected to as being irrelevant.)

A. I do not think it would be to the best interests of the Bank to answer that.

Q. Do you refuse to answer that question? A. I do.

(Counsel for plaintiff proffers to prove by this witness that some of the directors of the First National Bank borrow money out of the Bank and that Walter D. Willson, a director, (289) at the present time, is indebted to the First National Bank in a large sum of money, or note given for money borrowed out of the Bank by said Willson.)

(Counsel for defendant objects to the above proffer on the ground that it is not relevant to the question in issue and that it is a question pertaining to the private and confidential bus-

iness affairs of the Bank and it would not be to the best interests of the Bank to divulge its business and put it on public record in the manner proposed.)

Q. Who is Samuel Suter?

(Objected to by Col. Little as being irrelevant.)

A. He is a retired gentleman who lives on Oak Hill Avenue.

Q. Is it a fact that he has a very nice residence on Oak Hill Avenue?

(Objected to as being irrelevant.)

A. Yes, sir.

Q. And that he is a man of considerable means?

(Objected to as being irrelevant.)

A. I suppose so; I do not know.

Q. Do you know also that he is a director in the Mechanics Loan & Savings Institute?

(Objected to as being irrelevant.)

A. Yes.

Q. Who is Mr. William J.—nicknamed "Pat" Hurley?

(Objected to as being irrelevant.)

A. I can hardly define him.

Q. Is he a business man of some importance? A. I think so.

Q. Does he have some property in Hagerstown? A. I think so.

Q. Is he a man of some age and experience?

(Objected to as being irrelevant.)

(290) A. I think so.

Q. Do you know that he owns what is called the old Lyceum Building, on West Washington Street close to the Eavey & Lane Bank Building?

(Objected to as being irrelevant.)

A. Yes.

Q. And that it has two store rooms with an entrance in the middle?

(Objected to as being irrelevant.)

A. Yes.

Q. Do you remember, the height of the building?

(Objected to as being irrelevant.)

A. I do not remember, no, sir.

Q. It is not over three stories, is it?

(Objected to as being irrelevant.)

A. I think not.

Q. Who is D. W. Doub, the attorney? A. He is an attorney.

Q. How long have you known him? A. Quite a while, 25 years.

Q. Do you know or have you heard from any source, or through any channel whatever, or have you gotten the impression, that Mr. D. W. Doub, the attorney, is opposed to the tearing down of the bank building of the First National Bank and erecting a six story building?

(Objected to by Col. Little on the ground that it is a hearsay.)

A. I heard it intimated.

Q. Do you know where Mr. Doub has his law office? A. I do not just now.

Q. It is not far from *from* the First National Bank, is it?

(Objected to as being irrelevant.)

A. No.

Q. Does the firm of Steffey and Findlay handle lumber, to your knowledge?

(Objected to as being irrelevant.)

A. Yes.

(291) Q. And building material such as cement?

(Objected to as being irrelevant.)

A. Yes.

Q. Do you remember that Mr. Lamkin, the contractor, in the presence of the Board of Directors, ordered J. Grason Steffey, of the Firm of Steffey & Findlay, to send some lumber down to the First National Bank recently?

(Objected to as being irrelevant.)

A. I do not remember.

Q. Who constitute the Executive Committee of the Board of Directors of the First National Bank? A. Mr. Mish, Mr. Steffey and Col. Little.

Q. In an affidavit over the signature of F. W. Mish, filed in the above entitled cause with the U. S. District Court in Baltimore, on March 31st, 1909, there appears this language: "That the said answer of the said Bank, now filed in this cause, was, before execution, submitted to the President and all the directors of said Bank except William Wingert, who this *day* was advised was antagonistic to any defense."

Q. Do you know anything about that, and is it true? A. Do I remember it?

Q. State what you remember about it? A. It was similar, I think, to what I heard read in your question.

Q. State the manner in which the answer was submitted to the president and all the directors except William Wingert? A. Submitted to the Board, do you mean?

Q. Yes. A. I don't remember that—the manner.

Q. In an affidavit over the signature of Frank W. Mish as president, filed in the above entitled cause with the Clerk of the U. S. District Court in Baltimore, on March 27th, I believe there appears this language: "that he (meaning F. W. Mish, president,) has been duly authorized to sign the (292) above answer (meaning the answer of the Bank) and to make this deposition." Do you remember, as a member of the Board of Directors, of considering the answer and giving Mr. Mish authority to sign it and make the affidavit to it? A. I do not remember clearly.

Q. Do you remember a special meeting of the Board of Directors which was called by the president to meet on a Thursday night some time in the latter part of January, in the Bank over there, and was such a meeting called at about the time mentioned? A. I think there was such a special meeting about that time.

Q. Do you remember what business, if any, was considered at that special meeting? A. I really can not tell at the present time—something in regard to the building, though.

RE-EXAMINATION.

By Col. C. A. LITTLE:

Q. Do you remember the day on which you signed the answer of the directors and made affidavit to the answer? A. I remember of signing it but I don't remember the date.

Q. You remember the occasion? A. Yes, sir.

Q. Where was that? A. Over in the First National Bank.

Q. In what part of the Bank? A. In the directors room, at the table.

Q. Were any papers read aloud on that occasion? A. Pertaining to what?

Q. To the answers to be filed in Baltimore? A. I think so.

Q. Do you recall what they were? A. I can not just now.

Q. State whether or not the answer which you signed was (293) read aloud to the directors on that occasion? A. Yes.

Q. Was any other answer or paper read aloud to the directors at that time? A. I think there was.

Q. Do you know what it was? A. I do not know. I can not tell you just now. It was a paper pertaining to the injunction that was filed.

Q. Then, how many papers were read on that day that you can recall? A. Two.

Q. How many did you sign? A. I only remember of signing one.

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

WOLFGANG M. NEWCOMER.

(Counsel for defendant offers in evidence a certified copy of the decree of the Circuit Court for Washington County, Maryland, sitting in Equity in No. 5518 Equity, appointing Charles McCauley, M. D., and Daniel W. Doub Committee of the estate of Harry McCauley, non compos, which is herewith filed and marked "Exhibit Decree."

(Objected to by Counsel for plaintiff as irrelevant.)

(Counsel for defendant offers in evidence a certified copy of the appointment of George C. Pearson as executor of George

R. Bowman, which is herewith filed and marked "Exhibit Pearson, executor of Bowman.")

(Objected to by counsel for plaintiff as being irrelevant.)

(Counsel for defendant offers in evidence a certified copy of the appointment of Clyde B. Furst, Executor of the estate of Catherine B. Bowman, which is herewith filed and marked." Exhibit Furst, Executor of Bowman.")

(Objected to by counsel for plaintiff as being irrelevant.)

Personally appeared DANIEL W. DOUB, a witness of lawful age, produced on behalf of the defendant, being duly sworn, (294) did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. Where do you live? A. Hagerstown, Maryland.

Q. What is your age? A. 50.

Q. What is your occupation? A. Attorney at law.

Q. State whether or not you hold any position, or have any connection, with the estate of Harry McCauley, non compos? A. I am co-committee with Dr. McCauley, brother of Harry McCauley, non compos, and was appointed, with Dr. McCauley, Committee of Harry McCauley in 1899, and have been acting since that time.

Q. Do you remember the Equity cause in which you were appointed Committee? A. 5518 Equity in the Circuit Court for Washington County.

Q. Who has charge of Harry McCauley's estate? A. Charles McCauley and I as Committee have charge of the estate of Harry McCauley.

Q. Is there any First National Bank stock belonging to the estate of Harry McCauley; and if so, how much? A. The estate of Harry McCauley holds 412 shares of First National Bank stock, which stock was inherited by him from the estate of his father, Henry McCauley.

Q. Do you know how much stock the estate of Henry McCauley had—how many shares? A. Over 800 shares; I am not positive of the exact amount.

(Witness is here shown paper marked "Consent of Charles McCauley, M. D. and Daniel W. Doub, Committee of Harry

McCauley, non compos, and of Charles McCauley, to Improvements," and asked by whom that paper is signed?

(Objected to by Mr. Neill.)

(295) A. It is signed by C. McCauley, M. D. and Daniel W. Doub, Committee for Harry McCauley, for 412 shares of the First National Bank stock held in the name of the Committee, and signed by C. McCauley, M. D. for 382 shares held by said C. McCauley, personally.

Q. Do you know Charles McCauley's signature? A. Yes, sir.

Q. Whose signature are those to that paper? A. The first paper is signed by C. McCauley, M. D., and myself, and the second one was signed by C. McCauley.

Q. In whose handwriting is the name of C. McCauley? A. In his handwriting. I know his signature and I saw him write his name both times.

(Paper marked as noted above offered in evidence, and the same is herewith filed and marked "Exhibit Consent of Charles McCauley, M. D., and Daniel W. Doub, Committee of Harry McCauley, non compos, and of Charles McCauley, M. D., to Improvements.")

(Objected to by counsel for plaintiff as being irrelevant.)

(Counsel for defendant offers in evidence a bundle of papers marked "Consent of Stockholders to Improvements," composed of 21 pages fastened together, and each and every page thereof, which paper is herewith filed and marked "Exhibit Consent of Stockholders to Improvements.")

(Objected to by counsel for complainant as irrelevant, generally, and not in proper form.)

Q. Where is your law office and how is it located with reference to the First National Bank? A. My law office is in the Eavey & Lane Company building on Court Place, first floor of the building, about 100 feet off of West Washington Street. The Eavey & Lane Building is directly opposite the first National Bank.

Q. How long have you been living in Hagerstown and how long have you been practicing law actively? A. I have been (296) practicing law 25 years and have been living in Hagerstown or in its suburbs, during all that time.

Q. Is Dr. Charles McCauley a man of some means?

(Objected to by Col. Little as being irrelevant.)

A. He is.

Q. What real estate does he own in Hagerstown, to your knowledge, and where is it located?

(Objected to as being irrelevant.)

A. He owns a dwelling house on South Potomac Street, where he resides.

Q. South of Antietam Street? A. Yes, sir.

Q. Does Dr. McCauley own any real estate on West Washington Street between the Square and Jonathan Street, or on the Public Square, or on Potomac Street between Franklin and Antietam Streets, or has he owned any within the above named limits since you have known him?

(Objected to as being irrelevant.)

A. Not to my knawledge.

Q. Is it a fact that Dr. Charles McCauley and yourself, about two years ago, as Committee for Harry McCauley, took a mortgage of $14,000 on the property purchased by Charles Eyerly about that time from the executors of John D. Swartz, and that property is on West Washington Street between the Square and Jonathan Street?

(Objected to as being irrelevant.)

A. I decline to state anything in regard to the investments of the Committee outside of the Investments in the First National Bank.

Q. If the Land Records show that such a mortgage for $14,000 was taken by Dr. Charles McCauley and yourself on the John D. Swartz property on West Washington Street, would or would not the Land Records be reliable and correct?

(Objected to as being irrelevant.)

A. They would be.

Q. Don't you know, as a matter of fact, that the Land Records of Washington County do show that Dr. Charles McCauley and yourself, as Committee for Harry McCauley, (297) recorded a mortgage for $14,000 on the John D. Swartz property on West Washington Street between the Square and Jonathan St. Which mortgage was executed by Charles H. Eyerly and wife a little more than two years ago?

(Objected to as being irrelevant.)

A. Yes, but I can't see what that has to do with whether the First National Bank ought to put up a new banking house or not.

Q. Do you know Frank W. Mish? A. I do.

Q. Is he a man of means?

(Objected to as irrelevant.)

A. He is said to be.

Q. Does he own any real estate on the Public Square, or on West Washington Street between the Public Square and Jonathan Street, or on Potomac Street between Franklin Street and Antietam Street?

(Objected to as being irrelevant and for the further reason that Mr. Mish testified himself that he did not own any such property.)

A. Not to my knowledge.

Q. Has Mr. Mish, during the time you have known him, ever had charge of or rented any real estate on the streets above mentioned?

(Objected to as being irrelevant.)

A. Not to my knowledge.

Q. Do you know Isaac Ankeney, a director of the First National Bank? A. Yes, sir.

Q. What is his business or occupation? A. He is a farmer.

Q. Do you know John Ankeney, his brother? A. Yes, I do.

Q. What is his occupation?

(Objected to as being irrelevant.)

A. He is a clerk or bookkeeper in the Maryland Surety & Trust Company.

Q. About how long has he been in that position?

(298)

(Objected to as being irrelevant.)

A. Since he was Tax Collector, about three years.

Q. Do you remember coming to the office of H. F. Wingert, senior counsel for the plaintiff in this case, some two, three or four weeks ago, or thereabouts, and charging said Wingert with reporting that you had gone over to the First

National Bank in the matter of the contemplated improvements, or something to that effect?

(Objected to as being irrelevant.)

A. I remember being in your office one time.

Q. Do you remember also stating in addition that S. M. Bloom told you I had made that statement to him?

(Objected to as being irrelevant and hearsay.)

A. I remember.

Q. Do you remember that H. F. Wingert explained to you that he had seen you frequently over about the First National Bank in consultation with some of the directors in the Bank and for that reason he presumed you had gone over to the First Nation Bank crowd, and your reply was that you were in there arguing with them against the contemplated improvements?

(Objected to as being irrelevant.)

A. I remember, yes.

Q. Is it true, then, that you were in the Bank arguing with the officials, or directors, trying to persuade them not to make the contempleted improvements? A. I never was at any meeting of the Board of Directors but I had several conversations with Mr. Frank W. Mish, the president of the Bank, in which I gave him my views in regard to the kind of building I thought the Bank ought to erect. If you desire to know what I recommended to him I will state it.

Q. Were you opposed in your views to the erection of a six story building by the directors of the Bank? A. My pre- (299) ference was a one story building, or remodeling the present building.

Q. Did you state that preference to the president of the Bank? A. I said that to Mr. Mish.

Q. Would you recognize a photograph of the First National Bank building if you were to see it? A. I think I would.

Exhibit "Photograph of Bank" shown witness and he is asked if he recognizes the principal building in that photograph? A. That is a photograph of the First National Bank.

Q. Whose property is the one next to it, on the left of the First National Bank building?

(Objected to as being irrelevant.)

A. The Kausler property.

Q. Who live in it? A. Mrs. Kausler and son and daughter.

Q. How long have they, or any of them, lived there, to your knowledge?

(Objected to as being irrelevant.)

A. As long as I can recollect.

Q. Do you remember the old gentleman, father of the Kausler children?

(Objected to as being irrelevant.)

A. Yes, sir.

Q. Do you remember that he was an important official in the Hagerstown Bank for many years and that he died in that property?

(Objected to as being irrelevant.)

A. Yes, sir.

Q. Whose is the property next to the Kausler property?

(Objected to as being irrelevant.)

A. It belongs to the Judge Bennett estate.

Q. Do you remember that Judge Bennett occupied that property for many years and up until his death, and that he died in that property, and that after his death Mrs. Bennett, his widow, lived there until her death a very few years ago?

(Objected to as being irrelevant.)

(300) A. I do.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

DANIEL W. DOUB.

Personally appeared J. O. SNYDER, a witness of lawful age, produced on behalf of the defendant, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. What is your full name? A. Jesse O. Snyder.

Q. Where do you live? A. At Hagerstown, and Clearspring, Md.

Q. What is your age? A. 39.

Q. And your occupation? A. I am a member of the Bar of Washington County.

Q. Are you connected with any of the banking institutions of the town? A. The Second National Bank.

Q. In what capacity? A. As a director and as attorney for the Second National Bank.

Q. Have you any connection with the First National Bank of Hagerstown, Maryland? A. I have a few shares of stock, 25 shares of stock that I bought not long ago.

Q. How long have you been a stockholder in the First National Bank? A. A month, probably.

Q. How many shares of stock do you own? A. 25.

(301) Q. From whom did you buy the 25 shares of stock that you now own? A. I think it belonged to somebody by the name of Ridenour. Mr. Thomas South was the administrator and I bought it through him at public sale.

Q. Where? A. In front of the Court House.

Q. Do you know the par value of the stock of the First National Bank? A. $10.00.

Q. What did you pay for this stock?

(Objected to by Mr. Neill as being irrelevant.)

A. $36.50, I think.

Q. Do you know what is the highest price First National Bank stock sold for at public sales? A. I have learned since I bought it that that was the highest price.

(Objected to by Mr. Neill as being hearsay testimony.)

Q. What induced you to buy that stock?

(Objected to as being hearsay, and generally.)

A. I guess I could give a number of reasons. One reason is that I think the contemplated building they are going to

put up there, from what I can understand, the way it is to be managed, I think it will be a pretty good paying investment. And another reason is: I watch the statements of that Bank and in the last few years I think it is making pretty rapid progress. And another reason is that I know most all of the Board of Directors of the Bank and I think they are all good, competent and careful business men; and I will say specially what induced me more than anything else, I suppose, would be the fact that I have known the president of the Bank, Mr. Mish, ever since we were children, and I consider him as level headed and careful a business man in financial matters as I ever knew in my life, and I never knew him to be connected with anything that was not a "go" financially. I consider his judgment on financial matters equal to that of any man I know any place.

(Counsel for plaintiff moves to strike from the record the reasons set forth by J. O. Snyder, as the same are irrelevant (302) and don't throw any light upon the issues here involved and are made up of opinion and hearsay testimony.)

Q. Do you know the lot owned by the First National Bank? A. Yes, I do.

Q. What is that lot worth?

(Objected to by Mr. Neill, on the ground that it is the opinion of a witness not properly qualified to answer.)

A. I would say that lot is worth $35,000 or $40,000 in my judgment.

Q. Upon what do you base your judgment? A. Judging from what other pieces of property on the same square sold for, and I consider that location as good a location as there is in Hagerstown.

Q. State whether or not you ever dealt in real estate yourself in Hagerstown? A. A little.

Q. Are you conversant with the values of real estate? A. Yes, in this town and County, pretty well.

Q. Where is your office now? A. In Hamilton Row, the new Hamilton building adjoining the Hamilton House.

Q. Can you say whether there is any demand in Hagerstown at this time for an office building in the vicinity of the Court House?

(Objected to as being the opinion of a witness not qualified to answer, and as being irrelevant.)

A. I think there is.

Q. How do you know there is such a demand? A. I have heard a number of people say so.

(Counsel for plaintiff moves to strike out the last question and answer.)

Q. Are there any office buildings in that part of the town? A. Yes, there is an office building on the opposite side of the street the Eavey, Lane Building.

(303) Q. How high is that building? A. Three stories.

Q. Is there an elevator in it? A. No, sir.

Q. How far is the property of the First National Bank from the Court House? A. Directly on the opposite side of the Street.

Q. State whether or not you as a stockholder of the First National Bank are in favor of the improvements contemplated, the erection of a six story bank and office building, or whether you are opposed?

(Objected to by Mr. Neill.)

A. I am in favor of it.

Q. Why are you in favor of it?

(Objected to.)

A. I think it will be a paying investment.

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

Q. The business center of the business district of Hagerstown has been designated by Mr. Edward Oswald, deputy clerk in the office of the Clerk of the Circuit Court for Washington County, in his testimony, as included in the Public Square, West Washington Street between the Public Square and Jonathan Street, and Potomac Street betweeen Franklin Street and Antietam Street; do you own any real estate within the limits of the business center as designated above?

(Objected to by Col. Little as being irrelevant.)

A. I do not.

Q. Does F. W. Mish own any real estate in the business center as above designated?

(Objected to by Col. Little because Mr. Mish has testified that he does not own such real estate.)

A. No, sir.

Q. Does Isaac Ankeney, a director?

(Objected to as being irrelevant.)

(304) A. No.

Q. Does Charles A. Little?

(Objected to as being irrelevant.)

A. I do not know.

Q. Does Francis H. Miller, another director?

(Objected to as being irrelevant.)

A. I think not.

Q. Does Dr. Charles McCauley?

(Objected to as being irrelevant.)

A. I think not.

Q. Does Wolfgang M. Newcomer?

(Objected to as being irrelevant.)

A. I know he does not own any on Washington Street; I do not know about Potomac Street.

Q. Does John D. Newcomer own any real estate in the business center of Hagerstown?

(Objected to as being irrelevant.)

A. I think not.

Q. Does J. Grason Steffey, or does he have any interest in any?

(Objected to as being irrelevant.)

A. I think not.

Q. You have an interest in quite a considerable amount of real estate in Washington County, do you not?

(Objected to as being irrelevant.)

A. Some.

Q. Isn't it a fact that you can walk in a straight line, without getting off of the estate of John T. Snyder and his

sons, in which you are interested, a distance of at least five miles?

(Objected to as being irrelevant.)

A. No, sir, that is not correct.

(305) Q. How many farms do the parties above designated, of which you are a member, own in this country?

(Objected to as being irrelevant.)

A. 8 or 10.

Q. Don't really know? A. Don't really know unless I would take my fingers.

Q. How long have you been practicing law in Hagerstown? A. About 14 or 15 years.

Q. In that time you have invested some money in mortgages on your own account and for your immediate family, have you not?

(Objected to as being irrelevant.)

A. Lots of it.

Q. Have you invested any in real estate in the business center in Hagerstown for any of your immediate family in the time you have been here?

(Objected to as being irrelevant.)

A. I really can not recall; not lately.

Q. Didn't you go to college with Mr. F. W. Mish?

(Objected to as being irrelevant.)

A. I did not.

Q. Did you graduate at the same school?

(Objected to as being irrelevant.)

A. Yes, we were brought up in the same town.

Q. Is it not a fact also that you are now attorney for Mr. Mish in a law suit, or that you were attorney in one in the February term of Court?

(Objected to as being irrelevant.)

A. One of the attorney.

Q. Isn't it a fact that you are senior counsel for him?

(Objected to as being irrelevant.)

A. I do not know about that.

Q. Don't you know what senior Counsel means? A. I
(306) do not know if he talked to me first about it or somebody else.

Q. I will say attorney of record?

(Objected to as being irrelevant.)

A. I am one of the attorneys of record, but I do not know if I am senior counsel of record or not. I believe I appear first.

Q. Is it also a fact that you and Mr. Mish are friendly?

(Objected to as being irrelevant.)

A. Very friendly.

Q. That you occasionally go out in the summer on warm nights driving with Mr. Mish and his family?

(Objected to as being irrelevant.)

A. Yes, and I might add that I go to his house four or five times a week.

Q. Do you know that within the last year there has been some First National Bank stock offered on the Court House pavement? A. I suppose there has. Do you mean during this year?

Q. Within the last year? A. I don't remember exactly but I think there was.

Q. Have you learned since you purchased your last stock what the last stock previous to the stock you bought on the Court House pavement, brought in front of the Court House? A. I have not heard anybody say, but my own impression is that the last stock brought about $34.00 or $35.00, something like that. I do not know; that is just my general impression.

Q. Have you made any inquiry as to what the last stock brought prior to the stock you bought, at public sale? A. I have not.

Q. Did you purchase the 25 shares of stock which you purchased recently, yourself? A. Myself.

Q. You were the bidder? A. I was the bidder.

(307) Q. Who were some of the other bidders for this stock? A. I noticed there Isaac Ankeney and some man I did not

know, and one of the Youngs—Joe Young, I think it was. I know I put on the last bid. I was waiting to see about where it would go and Isaac Ankeney's bids was $36.40 and I bid and got it.

Q. Isn't Ankeney close to Mish and also rather close to yourself?

(Objected to as being irrelevant.)

A. No, I don't think he is so close to Mr. Mish. I have know him all my life but he is not specially close to me.

Q. He lives in your home town of Clearspring? A. Yes, right in the town.

Q. Has Isaac Ankeney been a frequent and high bidder for First National Bank stock heretofore?

(Objected to as being irrelevant.)

A. I don't know; I never heard him bid on it before. I was never there when he was bidding.

Q. Have you ever bid on any First National Bank stock? A. Not lately. I have owned stock in that Bank a number of times but not lately.

Q. Have you been a bidder on any First National Bank stock that was sold on the Court House pavement in the last couple of years? A. I do not know that I have; I do not think so. I believe I did bid on it last year some time. I think there was some up and I bid on it, but I don't recollect.

Q. To what figure did you bid it? A. I have not the slightest idea, now.

Q. Did you consult with F. W. Mish in reference to this stock before you bought it? A. Not one word.

Q. Have you seen the plans, specifications and blue prints of the First National Bank as contempleted? A. No, sir, I have not. I think I did, too. I think there were some preliminary plans drawn up and I think I saw them.

(308) Q. Do you know how many rooms, office rooms, there will be in the proposed First National Bank building? A. No, sir.

Q. Have you made any figures as to the business results of the contemplated improvements? A. I have seen the figures but I have not made any myself, but I do not remember them now.

Q. In purchasing this stock of the First National Bank, were you influenced by the result of a systematic calculation and estimation of business results that would accrue from these improvements, or simply because you know Mr. Mish and have confidence in him? A. To tell the truth, as I have said before,

I have never known Mr. Mish to be connected with any thing that he did not give it most careful attention and never goes into anything unless he figures it out with as much care, in my judgment, as a man could figure it out, and I dont think he would go into a matter of this sort, or try to influence his Board of Directors—if he has done that—unless he has seen his way very clearly; and that, of course, influences me—knowing the man as I do; and I think too that this town is just in the condition that a business office building would pay without knowing the details myself—I think it would. And those things, taken together, of course had their effect upon me to buy the stock.

Q. In buying the 25 shares of First National Bank stock did you take into consideration at all the legal questions involved in the case in which you are now testifying. A. I do not know if there were any legal questions at that time. I did take them into consideration if there were any at that time.

Q. Then, in purchasing these 25 shares of stock, you didn't have in mind or concern yourself with the matter or question of Mr. Mish's judgment and wisdom with reference to the legal questions involved in this suit touching the right and power of the First National Bank to make the contem-
(309) plated improvements; is that a fact? A. I imagine that is a fact, yes.

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

J. O. SNYDER.

Hagerstown, Md., June 11th, 1909.

The taking of Testimony on behalf of the Defendants Continued.

Personally appeared LOUIS ROSE, a witness of lawful age, produced on behalf on the defendant, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. State your full name? A. Louis Rose.
Q. Your age? A. 47.
Q. Residence? A. 54 Broadway, Hagerstown, Md.

Q. Your occupation? A. Shoe Merchant.

Q. Are you in any way connected with the First National Bank of Hagerstown? A. Only as a depositor.

Q. Do you know the location of the First National Bank property in Hagerstown? A. Yes.

Q. How is it situated with reference to the business part of Hagerstown?

(Objected to as being irrelevant.)

A. The best situation in the business part of Hagerstown.

Q. Do you know about the contemplated improvements to be made by the First National Bank? A. Yes, I have heard (310) of them.

Q. What are they doing at the Bank now? A. It is apparent that the building is being torn down to make room for improvements needed.

(Mr. Neill, of counsel for plaintiff, asks that the part of the answer of the witness relative to making improvements be stricken from the records.)

Q. What do you know about the site and location as the site for an office building?

(Objected to because the witness is not qualified to answer.)

A. The best site in town from a business view point for such purposes.

Q. If the First National Bank erects on that lot a six story bank and office building, the first floor to be occupied by the Bank and the other floors to be rented out as offices, state what sort of an investment that would be for the funds of the Bank?

(Objected to as being a mere matter of opinion and the witness is not qualified to answer, and because irrelevant.)

A. It is a most valuable site and it is one from which a direct income is always available by the occupancy of those offices. The proposed building is one for which there is a great demand by the growth and development of Hagerstown causing a demand for office room in the central portion of Hagerstown. It will surely be an investment for the good of the Bank, and from a business standpoint the income would be enough to free the Bank from all expense for a Banking room.

Q. As compared to other investments made by the Bank, what sort of an investment would this be?

(Objected to as being irrelevant, and the mere opinion of a witness who is not properly qualified to answer.)

A. From a business view there is nothing so good as real estate; its income is continuous, and the demand for offices will grow greater, as the town grows greater.

Q. What are the best and safest investments that can be made in this town?

(311)

(Objected to as being irrelevant, and as being the opinion of a witness who is not properly qualified to express such opinion.)

A. Nothing so good as good real estate.

Q. Do you or not own any real estate in this town? A. Considerable.

Q. Are you conversant with the value of real estate in this town? A. I think so.

Q. What opportunities have you had for learning the value of real estate in this town? A. By owning some of the most valuable sites. We have a building that we think valuable, in which we conduct our business, and which has proved good. I have some properties on Franklin Street which are in demand at a price way above their cost, and real estate on Broadway for which there is a very great demand and which is constantly increasing in value.

(Counsel for complainant asks that the last answer of the witness be stricken from the record, as the same is irrelevant and not responsive to the question.)

Q. Have you any knowledge of the rental values of properties in Hagerstown? A. Yes, I have knowledge of properties in which we are directly interested.

Q. Have you a knowledge generally of the rental values of property in Hagerstown? A. Yes.

Q. What sort of an income would be derived from the rentals of a building such as is proposed to be erected by the First National Bank, namely, a six story banking and office building, the first floor to be occupied by the Bank?

(Objected to on the ground that it is irrelevant, a matter of opinion and that the witness is not qualified to give such opinion.)

A. A very good income.

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

(312) Q. Have you ever been connected with the First National Bank in a business way? A. Yes.

Q. State in what capacity? A. I once owned 100 shares and was a director for six or seven years.

Q. How long ago was this? A. 7 years ago. My sister is at present a stockholder; she owns 55 shares, if this will be of any value to you.

Q. Do you know what dividend is paid annually on each share of stock of the First National Bank—what the dividend is on one share for a year? A. The gross amount of the income?

Q. Yes. A. 10 per cent., $1.00 a share.

Q. Do you know Rufus Hayes? A. Yes, sir.

Q. How long have you known him? A. All my life—about 40 years.

Q. Is he a business man? A. I have great respect for Mr. Hayes as being a splendid business man.

Q. Consequently you would consider him a man prudent in business, would you?

(Objected to as being irrelevant.)

A. Yes.

Q. Do you know Mr. Ira Hays? A. Yes, sir.

Q. Is he related in any way to Rufus Hays?

(Objected to as being irrelevant.)

A. A brother.

Q. How long have you known him?

(Objected to as being irrelevant.)

(313)

A. [illegible] my life, since I was a little boy.

Q. Is he a man of some business capacity?

(Objected to as being irrelevant.)

A. Yes, sir.

Q. Can you also say of him that he is prudent in business?

(Objected to as being irrelevant.)

A. Yes.

Q. Do you know that Rufus Hays and Ira Hays are members of the firm of R. H. Hays and Bros.?

(Objected to as being irrelevant.)

A. Yes.

Q. Do you know that the firm of R. M. Hays and Bros.—or some of them, including Rufus Hays and Ira Hays, are at present erecting a building on West Washington street, on the same side of the street as the First National Bank?

(Objected to as being irrelevant.)

A. Yes, I am aware of that.

Q. Do you know how many stories they intend to put into their building?

(Objected to as being irrelevant.)

A. I know from the cut that is published in the Globe, which calls for a three building.

Q. How long have you known S. M. Bloom? A. All my lifetime; since I was a little child.

Q. Have you ever heard his wealth estimated?

(Objected to as being irrelevant.)

A. A number of times.

Q. Give some estimates of Mr. Bloom's wealth, as near as you remember them?

(Objected to as being irrelevant and hearsay.)

A. It is impertinent in me to estimate a man's wealth from somebody's opinion. I have heard him estimated at as much as $500,000 and $750,000 and some think he is worth a mil-
(314) lion. I do not know what he is worth.

Q. Do you know what Mr. Bloom was worth when he first started in business; or, in other words, has he himself made and accumulated, largely, the wealth which he possesses?

(Objected to as being irrelevant.)

A. He has, as far as I know.

Q. Would you consider Mr. Bloom a careful and prudent man in business? A. Most undoubtedly.

Q. You served as a director in the First National Bank part of the time when Mr. Bloom was president, did you not? A. Yes, sir.

Q. Have you any reason which you care to give why you are not now a director, or why you are not now a stockholder in the First National Bank?

(Objected to as being irrelevant.)

A. That is a bread and butter question. I am not now a stockholder because I can not afford to own the stock. I was interested in some building operations some years ago and had need of the money.

Q. How far up is the Hays property in process of construction at the present time? A. To the second story now.

RE-DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. What is the Hays building to be used for, do you know? A. The lower floor for storeroom purposes, for the conduct of the stationery business, part of the second floor for offices, and the third floor for the use of Columbia Business College.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

LOUIS ROSE.

6/11/09.

Personally appeared Dr. CHARLES MCCAULEY, a witness of lawful age, produced on behalf of the defendants, being duly sworn, did depose and say as follows:
(315)

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. What is your full name? A. Charles McCauley.
Q. Your age. A. 55.
Q. Residence? A. 116 South Potomac street, Hagerstown, Md.
Q. And your occupation? A. I am a retired physician.
Q. Have you any connection with the First National Bank of Hagerstown? A. Yes.

Q. State what it is? A. A director of the Bank, a depositor and a stockholder.

Q. How many shares of stock do you own in your own name? A. 382.

Q. Do you represent any other stock? A. I am co-committee for my brother, who owns 412 shares.

Q. With whom are you co-committee? A. Mr. D. W. Doub.

Q. How long have you been a director of the First National Bank? A. About 19 years, since my father's death.

Q. Do you know the lot of ground owned by the First National Bank? A. Yes.

Q. Where is it located? A. On West Washington street next to the Hotel Hamilton, across from the Eavey & Lane Building and adjoining the Kausler building.

Q. Is there a building on that lot? A. There is none there now.

Q. Was there a building on that lot? A. Yes.

(316) Q. What sort of a building? A. A bank building.

Q. What became of that? A. Tore it down.

Q. For what purpose? A. To build a six story office building and bank on the first floor.

Q. As a stockholder state whether or not you are in favor or opposed to the improvements?

(Objected to by Mr. Neill as being a repetition.)

A. In favor of it.

Q. State what your attitude as a director was with reference to the erection of a six story banking and office building?

(Objected to as being irrelevant.)

A. I was in favor of it.

Q. Why were you in favor of it?

(Objected to as being irrelevant.)

A. Because it was the best possible investment of the stockholders' funds.

(Objected to as being a mere matter of opinion.)

Q. Why do you say it was the best possible investment for the stockholders' funds? A. Because it would give the banking room free of expense to the stockholders and the rents derived

from the offices would return a better revenue than what we could get from loans of the Bank's funds.

(Objected to by Mr. Neill as being a mere matter of opinion.)

Q. Are you acquainted with real estate values in Hagerstown? A. Yes.

Q. What opportunities have you had for knowing them? A. I have been a close observer and I own real estate myself.

Q. Where, in Hagerstown? A. Yes, sir, 116 S. Potomac St.

Q. Do you know personally of sales of real estate made (317) in Hagerstown recently? A. Yes.

Q. State whether or not real estate in Hagerstown is a valuable asset? A. Yes, it is a valuable asset; none better.

(Objected to by Mr. Neill as being a mere matter of opinion.)

Q. Why do you say "none better?" A. Because, in my judgment, it is perfectly safe and the town is growing, and to my knowledge property has enhanced in value just double in the last 15 years.

Q. State what you know of the location of the First National Bank property as a location for an office building?

(Objected to by Mr. Neill as being irrelevant and a mere matter of opinion.)

A. It is an ideal place for an office building from the fact that it is almost opposite the Court House and centrally located in the business portion of the town.

Q. Are there any other buildings of importance close to it? A. The Hamilton Hotel, Eavey, Lane Bank Building and the Court House.

Q. How is the First National Bank location with reference to the business portion of Hagerstown? A. Centrally located.

Q. Did you ever sign an answer as a director to be filed in court in answer to the bill of complaint in this case? A. Yes.

Q. Where did you sign it? A. In the First National Bank.

Q. Do you know the day on which you signed it? A. I can not remember the date.

Q. Do you remember the occasion? A. Yes, sir.

Q. State, as near as you can, all that occurred on that oc-
(318) casion?

(Objected to as being irrelevant.)

A. Col. Little read the petition of the defendant and the directors were all present except William Wingert at the time.

Q. Was any action taken? A. It was unanimously decided to sign the petition.

Q. By the COMMISSIONER: Petition or answer? A. Answer, I mean.

Q. Did Col. Little read any other papers on that occasion?

(Objected to.)

A. I think he did.

Q. Do you know what it was? A. I am no attorney and I don't know what you call these papers.

Q. Do you know what it was like? A. It was an answer, I guess, to be filed in court.

Q. Do you recall whose answer that was? A. The Board of Directors.

Q. That was the other. You say you do not know? A. I knew at the time but I can not just recall it.

Q. Did you sign the other paper that was read? A. Yes, sir.

Q. How many papers did you sign on that day? A. I think I signed two papers, was it not?

Q. I can not prompt you. A. I can not remember. I have had lots of things go through my mind since then.

Q. Then you say you do not know. If you do not know I don't want you to say. Do you know what was done with the other paper read on that occasion—what became of it? A. I suppose it was filed in court. I am not positive. I am not an attorney.

Q. Do you know whether any attorney was ever authorized by the Bank or Board of Directors to make defense in this case? A. Yes, sir.
(319)

(Objected to.)

(319) Q. Where was that done? A. In the banking room.

Q. And what was done on that occasion?

(Objected to as not the best evidence that can be offered.)

A. Col. Little was instructed to employ additional counsel in the case. He, as attorney for the Bank, was instructed to employ additional counsel in the case to defend the stockholders of the Bank.

(Objected to by Mr. Neill.)

Q. What is the character of the building that is to be erected on the site of the First National Bank? A. A six story office building with banking room on the first floor.

Q. How much of the building, if any, is to be used by the Bank? A. The first floor.

Q. All of it, or part of it only? A. All of it.

Q. And the remaining five stories to be used for what purpose? A. For rental.

Q. Will there be an elevator in the building? A. Yes.

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

Q. You have stated that you have real estate in Hagerstown? A. Yes, sir.

Q. Do you have any real estate within the district designated by Edward Oswald, a witness, as the business center of the town? A. I don't remember exactly what that was.

Q. The business center of the town means the Public Square, West Washington street between the Public Square and Jonathan street and Potomac street between Franklin street and Antietam street? A. Mine is outside of that. My residence is just beyond Antietam street.

Q. Do you have any other real estate in Hagerstown? A. That is all.

(320) Q. You are a man of considerable means, are you not? A. I am a comfortable liver.

Q. You possess sufficient mean to enable you to live without working. A. I think so.

Q. And educate your son at a good school besides? A. Yes. I can live the rest of my lifetime if I never make another cent if I live to be 100 years old.

Q. Have you ever endeavored to purchase any real estate within the section designated above as the business center of Hagerstown? A. No, sir.

Q. What dividend per share is paid annually by the First National Bank? A. 10 per cent.

Q. I am talking about the total, not the per cent.? A. $1.00 per share.

Q. Have you made any figures or calculation as to the net income that would be derived from the contemplated changes and improvements by the First National Bank over and above what the present income is? A. Yes, about five to seven per cent.

Q. Is that the whole of your answer to the aforegoing question? A. Possibly I don't understand the question.

(Stenographer reads question to witness.)

A. I personally think that the stockholders will realize that amount from the rentals, and the banking room free of cost, will amount to that much to the stockholders.

Q. Had you read the National Bank Act with reference to the power of a National Bank to hold real estate prior to March 10th, 1909? A. I glanced over the National Bank Act one week after I was made a director in the First National Bank.

Q. Explain how the changes and improvements contemplated and in process of completion by the First National Bank are "such steps as shall be necessary for its (the Bank's) immediate accommodation in the transaction of its business." A. I hardly understand that question.

(321) (Stenographer reads question to witness.)

A. When the building is done of course the Bank will move into it.

Q. Is a six story office building, such as is contemplated, "necessary for its (the Bank's) immediate accommodation in the transaction of its business?" A. The directors of the First National Bank did not want to put up a one story building that would cost possibly $175,000 or $200,000 and do like the Frederick Bank did, pay $10,000 a year rent for their banking room, and it was the judgment of the Board, in connection with the banking room, to build an office building that would realize something for its stockholders, and an office building is much needed in Hagerstown at this time, because all the people that have offices now are located in cages, and a majority of the lawyers and doctors in Hagerstown and several other parties have made application to the Board of Directors of the First National Bank months ago for offices, and if they had been foolish enough to sign up papers, every office in the building could have been rented now and the basement too. A gentleman came to see me the other day. Does that cover the question?

Q. Mr. WINGERT: You are not examining me, I am examining you. A. I am no attorney, you know.

Q. Is that the whole of your answer to the aforegoing question? A. To the best of my knowledge. I do not know what you want to draw out of me. If you ask me more direct I might possibly say more.

Q. Do you and D. W. Doub, Committee, hold a $14,000 mortgage on a property on West Washington street between the Eyerly building and the Hays building now in course of erection?

(Objected to by Col. Little as being irrelevant, and a matter of a purely private business character and that has nothing whatever to do with the issues in this case.)

A. We have a mortgage, yes.

Q. Is it a fact that you took that mortgage shortly after the property on which you took it was sold at public sale by the executors of John D. Swartz?

(Objected to as being irrelevant.)

(322) A. Yes, sir.

Q. Were you a bidder for that property on which you took the mortgage at the time it was sold at public sale?

(Objected to as being irrelevant.)

A. No, sir.

Q. As a director of the First National Bank, do you know what loans were made by the Bank on note?

(Objected to as being irrelevant.)

A. Yes, sir.

Q. State whether or not any of the directors of the First National Bank borrow money out of the Bank on note?

(Objected to as being irrelevant.)

A. They have ever since I have been in the Bank.

Q. Do you at the present time know any of the directors that borrow money out of the First National Bank?

(Objected to as being irrelevant and not pertaining to the issues in this case, and for the reason that it is a matter pertaining to the private and confidential affairs of the Bank, and that the Bank is subject to Government inspection.)

A. I do.

Q. Name some of the directors that borrow money?

(Objected to as being irrelevant and not pertaining to the issues in this case, and for the reason that it is a matter pertaining to the private and confidential affairs of the Bank, and that the Bank is subject to Government inspection.)

A. Mr. Horst does when he needs money in his business and he puts up good collateral. And we loan Mr. Steffey; he is in business and borrows money occasionally and puts up collateral.

Q. Any others? A. Yes, during the time I have been a director?

Q. Any others you can think of? A. Yes, the other directors borrow money at times, of course. I don't know if any of them have any money out of Bank now or not.

Q. Name some of the directors that have been borrowing money out of the First National Bank since Mr. Mish has been (323) president?

(Objected to by Col. Little as being irrelevant, not pertaining to the issues in this cause, and for the reason that it is a matter pertaining to the private and confidential affairs of the Bank, and that the Bank is subject to government inspection.)

A. I do not know of any others except Mr. Steffey and Mr. Horst.

Q. Has Mr. Walter D. Willson been borrowing any, to your knowledge?

(Objected to as being irrelevant.)

A. Yes, that is right.

Q. What is the most amount of money that has advanced or has been loaned at any one time, to the best of your recollection, to Mr. Horst, Mr. C. M. Horst, by the Bank?

(Objected to as being irrelevant.)

A. That is a very difficult question for me to answer, because Mr. Horst always has borrowed money from the Bank. When Mr. Bloom was president of the Bank Mr. Horst had credit at the Bank. He always put up collateral and borrowed money, and that is a difficult question for me to answer. Mr. Horst does a big business through the Bank, often as much as $35,000 or $40,000 a month, and sometimes more than that. I don't think at any time, in my judgment, he has had more

than four or five or six thousand dollars out of the Bank at one time, and that only for a few days and always amply secured.

Q. What is the most amount of money to the best of your recollection, that Mr. Walter D. Wilson has had borrowed out of the Bank at any one time since Mr. Mish has been president of the Bank, or that has been advanced by the Bank for Mr. Willson's account?

(Objected to as being irrelevant.)

A. Mr. Willson has endorsed paper for the Brewery, that has been approved by the Government Examiner, to the extent of $12,000 or $14,000. It was always satisfactory to the Government Examiner.

Q. Has Mr. Willson ever borrowed any on his own account, and what amounts?

(Objected to as being irrelevant.)

A. He borrowed money and always put up good security. He always secured the Bank well.

(324) Q. Give the amount? A. I can not remember the amount.

Q. As near as you can remember it? A. Several thousands dollars, $4,000 or $5,000; something like that.

Q. What about the amounts advanced Mr. Steffey,—or Steffey & Findlay, as near as you can remember?

(Objected to as being irrelevant.)

A. Mr Steffey has borrowed as high as four or five or six thousand dollars at a time, secured by collateral.

Q. Since Mr. Mish has been president of the Bank? A. Yes, and when Mr. Bloom was president.

Q. Has the president been borrowing money out of the Bank on notes, since he has been president?

(Objected to as being irrelevant.)

A. He has borrowed some money, yes.

Q. Give the figures, as near as you can remember. A. I don't remember just what it was.

Q. Do you know, as a matter of fact, that the president has had at one time as much as $8,000, whether on his note or on the accommodation of the Bank?

(Objected to as being irrelevant.)

A. I do know whether he has had that much at one time—I could not say he had—but Mr. Mish and all the Board of Directors always secure the Bank when they take money out of it, and it is approved by the Government Examiner.

Q. Is it a fact that you have considerable money loaned on mortgage in this county?

(Objected to as being irrelevant.)

A. I do not know know why I should answer such question that is, because I do not see what bearing that has on the building of the Bank building.

(325) Q. Do you refuse to answer that question? A. No, I don't refuse. I have mortgages throughout the county and town too.

Q. What rate of interest do those mortgages bear? What rate of interest do you realize on those mortgages at present?

(Objected to as being irrelevant.)

A. From 4½ to 6 per cent.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

C. M. McCAULEY.

Personally appeared SAMUEL EMMERT, a witness of lawful age, produced on behalf of the defendants, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. State your full name? A. Samuel Emmert.

Q. Your age? A. 42.

Q. Your occupation? A. Hardware and machinery business.

Q. State your residence? A. 305 Potomac Avenue, Hagerstown, Md.

Q. You say you are in the hardware and machinery business—what sort of a hardware store do you conduct? A. A

general line, a full line of hardware, builders hardware and farmers hardware, a complete stock of hardware in all classes.

Q. Wholesale and retail? A. Yes.

Q. Where is your store located with reference to the First (326) National Bank of Hagerstown? A. 43 and 45 W. Washington street; just down about two 40 ft. lots on the opposite side of the street from the First National Bank—maybe three lots.

Q. Are you the owner of any real estate in Hagerstown? A. Yes, sir.

Q. State what real estate you own in Hagerstown? A. I own that store property that runs through to the alley; I own my residence on Potomac Avenue; 11 double houses on Lanvale street and Summer street; I own three houses on the corner of Washington and Avalon Avenue, and three houses on West North St.

Q. Do you own any other real estate in Washington County? A. Yes.

Q. Where? A. I own two farms on the Western Pike.

Q. What do you do with the real estate in Hagerstown not occupied by your store and by you as a dwelling? A. I rent it.

Q. Are you conversant with the rental values of properties in Hagerstown? A. Yes.

Q. How did you acquire that knowledge? A. Well, I dealt quite a good deal in real estate and bought that Stake property when it was sold and rented it and sold it and changed around, speculated some.

Q. Isn't it a fact that you have dealt quite extensively in real estate?

(Objected to by Mr. Neill as leading.)

A. Yes.

Q. Do you know the lot of the First National Bank? A. Yes.

Q. Is there a building on it now? A. No, sir.

Q. Was there a building on it? A. Yes, sir.

(327) Q. What sort of a building was it? A. A two story brick building with a mansard roof in the front, and the rear was just two stories.

Q. By whom was it occupied? A. By the First National Bank and by Mrs. Landis as a boarding house.

Q. Do you know how long Mrs. Landis occupied part of it as a boarding house. A. I could not say exactly, but I suppose eight or ten years.

Q. What part of the building did she occupy? A. All of it except the bank room.

Q. Do you know the character of improvements that the First National Bank is about to make on that lot? A. I know something of it. They are going to put up a six story building. We generally get in touch with these things when contemplated.

Q. For what is it to be used? A. As a banking room and an office building.

Q. State what you know of the location of the First National Bank as a location for an office building? A. I think it is the best in town, because near the Court House.

(Objected to as being irrelevant.)

Q. If the First National Bank erects a six story bank and office building, state what sort of an investment that will be for the funds of the bank?

(Objected to as being irrelevant and as being a matter of opinion of a witness not properly qualified to give an opinion.)

A. Good.

Q. What do you mean by "good." A. I mean it will pay when I say "good."

Q. Why do you consider it a good investment?

(Objected to as irrelevant and a mere matter of opinion.)

A. Because there is no good office building in this town, and it is the best location in the town, being near the Court House and on the best street of the town; that is the reason.

Q. Why, Mr. Emmert, have you bought all these houses (328) and farms and properties in Hagerstown and Washington County?

(Objected to as being irrelevant.)

A. Because it is real estate, and I think real estate is the best investment that catches me.

Q. Have you any other reason for saying that the investment of the funds of the First National Bank in a six story banking and office building is a good investment, besides the reasons already given?

(Objected to as being irrelevant.)

A. The way I look at these things is, first, is it a paying proposition, whether the stockholders in the Bank will get rev-

enue from it. That is the way I look at any investment; and I believe the revenue will be all right.

Q. What effect would the revenue from a building of that kind, if any, have upon the cost to the bank of its banking room?

(Objected to as being irrelevant and the mere opinion of a witness not qualified to give such opinion.)

A. Well, of course, the banking room is the main room, and the way I understand it, they are going to put in an up-to date vault, safe deposit boxes, etc., which any up-to-date bank has.

(Stenographer is asked to read question to witness, which was done, and witness answers:

A. I don't think it would effect the price of the banking room as regards rent.

By the COMMISSIONER: Do you understand the question?

(Stenographer reads question to witness.)

By the COMMISSIONER: Is that your answer in full to the aforegoing question? A. Yes.

Q. Will it, or not, be an advantage to the Bank to have rooms and offices to rent out in the banking building?

(Objected to as being irrelevant and as a mere opinion of a witness not qualified to give such opinion.)

A. It will.

Q. Will the Bank itself have to pay rent for its banking room?

(329) (Objected to as being irrelevant and as the mere opinion of a witness not qualified to give such opinion.)

A. Yes.

Q. In what way? A. Set down so much; what the rental value of it is.

Q. Will that rental value of the banking room proper be increased or lessened so far as the expenses of the Bank are concerned by reason of the five stories of offices above?

(Objected to as being irrelevant and the mere opinion of a witness not qualified to give such opinion.)

A. It would be the same.

Q. Will the result be the same to the stockholders?

(Objected to as being irrelevant and the mere opinion of a witness not qualified to give such opinion.)

A. Yes.

Q. Will it cost the Bank as much to maintain its banking room if the banking room is in a six story building and five stories are rented out as offices, as it would if the banking room were in a one story building with no offices in it to rent?

(Objected to as a matter of opinion of a witness not qualified to give such opinion and as being irrelevant.)

A. It will not.

CROSS-EXAMINATION.

By H. F. WINGERT:

(330)

Q. Who are some of the principal clerks in your store?

(Objected to by Col. Little as being irrelevant.)

A. Harry Powles and Joshua Powles.

Q. State the family relations existing between Harry Powles and S. Lewis Lamkin, who has the contract for the improvements at the First National Bank?

(Objected to as being irrelevant.)

A. Harry Powles is married to Mr. Lamkin's daughter, that would make Mr. Lamkin his father-in-law.

Q. Have you made any figures or any calculations as to the net income in toto that would come to the First National Bank by reason of the contemplated changes and improvements? A. No, sir, I did not figure it.

Q. Do you know how many offices are to be put into the contemplated six story building? A. Not exactly.

Q. How then can you arrive at a conclusion as to the net income or net profits which will accrue to the Bank from their contemplated improvements—a six story building—over and above the revenue which it has been realizing from its three story building heretofore? A. Well, I didn't go into it in a definite way but just—

Q. Merely guessed at it? A. Not guessed at it; but from the surroundings, the location of the place, the demand for

enue from it. That is the way I look at any investment; and I believe the revenue will be all right.

Q. What effect would the revenue from a building of that kind, if any, have upon the cost to the bank of its banking room?

(Objected to as being irrelevant and the mere opinion of a witness not qualified to give such opinion.)

A. Well, of course, the banking room is the main room, and the way I understand it, they are going to put in an up-to date vault, safe deposit boxes, etc., which any up-to-date bank has.

(Stenographer is asked to read question to witness, which was done, and witness answers:

A. I don't think it would effect the price of the banking room as regards rent.

By the COMMISSIONER: Do you understand the question?

(Stenographer reads question to witness.)

By the COMMISSIONER: Is that your answer in full to the aforegoing question? A. Yes.

Q. Will it, or not, be an advantage to the Bank to have rooms and offices to rent out in the banking building?

(Objected to as being irrelevant and as a mere opinion of a witness not qualified to give such opinion.)

A. It will.

Q. Will the Bank itself have to pay rent for its banking room?

(329) (Objected to as being irrelevant and as the mere opinion of a witness not qualified to give such opinion.)

A. Yes.

Q. In what way? A. Set down so much; what the rental value of it is.

Q. Will that rental value of the banking room proper be increased or lessened so far as the expenses of the Bank are concerned by reason of the five stories of offices above?

(Objected to as being irrelevant and the mere opinion of a witness not qualified to give such opinion.)

A. It would be the same.

Q. Will the result be the same to the stockholders?

(Objected to as being irrelevant and the mere opinion of a witness not qualified to give such opinion.)

A. Yes.

Q. Will it cost the Bank as much to maintain its banking room if the banking room is in a six story building and five stories are rented out as offices, as it would if the banking room were in a one story building with no offices in it to rent?

(Objected to as a matter of opinion of a witness not qualified to give such opinion and as being irrelevant.)

A. It will not.

CROSS-EXAMINATION.

By H. F. WINGERT:

(330)

Q. Who are some of the principal clerks in your store?

(Objected to by Col. Little as being irrelevant.)

A. Harry Powles and Joshua Powles.

Q. State the family relations existing between Harry Powles and S. Lewis Lamkin, who has the contract for the improvements at the First National Bank?

(Objected to as being irrelevant.)

A. Harry Powles is married to Mr. Lamkin's daughter, that would make Mr. Lamkin his father-in-law.

Q. Have you made any figures or any calculations as to the net income in toto that would come to the First National Bank by reason of the contemplated changes and improvements? A. No, sir, I did not figure it.

Q. Do you know how many offices are to be put into the contemplated six story building? A. Not exactly.

Q. How then can you arrive at a conclusion as to the net income or net profits which will accrue to the Bank from their contemplated improvements—a six story building—over and above the revenue which it has been realizing from its three story building heretofore? A. Well, I didn't go into it in a definite way but just—

Q. Merely guessed at it? A. Not guessed at it; but from the surroundings, the location of the place, the demand for

offices, etc., I said in a rough way it would be a paying investment.

Q. Do you really know what the income was that was derived, say, for the 12 months prior to March 1st, from the buildings that were on the lot of the First National Bank? A. I don't think there was any revenue but the boarding house, except the bank room. At least that was all it was when I was in the bank there. They had a stable but it was not often rented.

The aforegoing question is read to witness and he is asked (331) if that is the whole of his answer:

A. I do not positively know, no, sir.

Q. You were a stockholder and a director not many years ago in the First National Bank, were you not? A. Not very many years ago.

Q. Do you own any stock in the Bank now? A. No.

Q. You sold it, did you? A. Yes.

Q. You also resigned as a director, did you not? A. Yes.

Q. State why you resigned as a director?

(Objected to as being irrelevant.)

A. I don't have to answer that, do I?

By the COMMISSIONER: It a matter for you to decide. A. I didn't like Mr. Bloom. He and I didn't gee very good. No other reason.

Q. How may stories to your property on West Washington St.?

(Objected to as being irrelevant.)

A. 3 stories.

Q. What is the depth of that building?

(Objected to as being irrelevant.)

A. 240 feet.

Q. How is it occupied?

(Objected to as being irrelevant.)

A. On the first floor is the store. Then the front part on the second floor is a flat that Harry Startzman lives in, and on the third floor my sister lives. Then in the back the three

stories I occupy in my business. That others is just the front part.

Q. What kind of material is the back building?

(Objected to as being irrelevant.)

A. Brick and corrugated iron-frame. There is 140 feet (332) of it brick and 100 ft. frame, covered with galvanized iron.

Q. Do you know anything about the law governing the power of National Banks to hold real estate?

(Objected to.)

A. Not much.

Q. Then, when you were giving your opinion in the matter of the income from the contemplated improvements, you did not take into consideration any legal aspect of the case now concerning the bank?

(Objected to as being irrelevant.)

A. No legal aspect, no.

RE-DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. When you and Mr. Bloom didn't "gee," as you stated, what position did he occupy? A. He was president of the Bank.

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

SAMUEL EMMERT.

Personally appeared J. GRASON STEFFEY, a witness of lawful age produced on behalf of the defendants, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. Give your full name? A. John Grason Steffey.
(333) Q. State your age? A. 41.

Q. Your residence? A. Williamsport, Md.

Q. Your occupation? A. Wholesale and retail coal and building material business.

Q. Have you any connection with the First National Bank of Hagerstown, and if so, what? A. I am a director.

Q. Anything else? A. I sustain business relations with them.

Q. You are a stockholder, are you not? A. Yes, a stockholder.

Q. As a stockholder, are you conversant with the contemplated improvements about to be made to the First National Bank of Hagerstown, Maryland? A. I am.

Q. What is the scope of the improvements to be made? A. The improvements contemplated are for the erection of a six story office building containing banking room on the first floor and directors' and president's room, I believe, and five stories of offices.

Q. State what was your attitude as a director with reference to these contemplated improvements?

(Objected to as irrelevant.)

A. I was in favor of the improvements.

Q. Why were you in favor of them?

(Objected to as irrelevant.)

A. For the reason that I considered the old building was out of repair and considerable money would have to be spent by the Bank for improvements there, and I thought it would be to the better advantage of the Bank, and a good investment, to tear out the entire old building and construct an up-to-date (334) Bank and office building.

Q. Why did you consider it a good investment?

(Objected to as being irrelevant and the opinion of a witness not qualified to give such opinion.)

A. Because the First National Bank occupies the best location in the town for a bank building and for an office building and for that reason I thought the offices would rent well and that the income from them would be a profitable one to the Bank from the money we proposed to spend on the building.

Q. How would such an investment compare with the ordinary investments made in the course of the banking business?

(Objected to as being irrelevant and the opinion of a witness not qualified to give such opinion.)

A. A real estate investment has always been considered a safe one, and from the standpoint of safety I should think it would be as much so as any investment the Bank might make.

Q. As a director of the Bank, if you had two propositions put before you, one to invest money secured by notes or other securities and the other to be secured by, real estate, which would you prefer?

(Objected to as being irrelevant and the opinion of a witness not properly qualified to give such opinion.)

A. I would prefer the real estate on the same margin.

Q. What effect will the erection of a six story banking and office building and the renting of the offices in said building have upon the rental cost of the banking room to the Bank?

(Objected to as being a mere matter of opinion.)

A. In my opinion, it will lessen the rental cost to the Bank in proportion to the income from the offices.

Q. How is the First National Bank situated with reference to the business part of Hagerstown? A. About centrally (335) located.

Q. Is there any building now on the First National Bank lot?

(Objected to as being irrelevant.)

A. No, there is no building there now.

Q. What has become of it? A. It has been torn down.

Q. For what purpose? A. For the erection of the proposed new banking and office building.

Q. Do you remember the occasion when the suit was brought by Mr. Wingert against the Bank? I do not mean the date, but the occasion? A. Yes, I remember when the paper was read before the Board, I think, announcing the filing of the suit by Mr. Lewis Wingert.

Q. What action, if any, was taken when the Board was apprised of the suit?

(Objected to by Mr. H. F. Wingert on the ground of its not being the best evidence that can be offered, and as being irrelevant.)

Q. Was defense made? A. The Board decided to defend the suit and instructed our attorney—what would you say—to answer or respond to it.

Q. Instructed their attorney— A. To answer the suit.

Q. Did they instruct him to do anything else that you can recall? A. Yes, to engage an attorney to assist in the defense.

Q. Do you recall the occasion—not the date—when the answers of the Board of Directors and the answer of the Bank were submitted to the Board of Directors?

(Objected to.)

A. Yes, sir.

(336) Q. Where was that done?

(Objected to as being irrelevant.)

A. In the directors' room.

Q. Who were present? A. I could not answer that question.

Q. Was Mr. William Wingert present? A. I do not know. I don't remember.

Q. State what was done with the answers, if anything? A. I don't recall; I don't remember the details of that any more than that the answers were, I think prepared and brought there by the attorney and submitted to the members.

Q. How submitted? In what way?

(Objected to as being irrelevant.)

A. I think they were written papers brought there to the meeting.

Q. Can you recall anything that was done with them or about them when they were brought there?

(Objected to.)

A. Yes, they were approved by the members of the Board present.

Q. Were the members of the Board made acquainted with the contents of them?

(Objected to as leading.)

A. Yes.

Q. How was that done? A. By reading the papers containing the answers to the suit and asking if those were approved by the members.

Q. Who read the paper? A. Col. Little.

Q. How many papers were read?

(Objected to as being irrelevant.)

A. I don't recall that now.

Q. Do you recall whether you signed any papers that day?

(Objected to as being irrelevant.)

(337) A. Yes. The papers—answers—were submitted to the members and approved by them and signed by the individual members of the Board, as I remember.

(Objected to by Mr. Neill.)

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

Q. Do you own any real estate on West Washington Street between the Public Square and Jonathan Street, or on the Public Square, or on Potomac Street between Franklin and Antietam Streets?

(Objected to by Col. Little as being irrelevant.)

A. No, sir.

Q. Have you ever managed or had control of any real estate within the above named districts?

(Objected to as being irrelevant.)

A. I have not.

Q. Before the directors decided to make the contemplated improvements did you look into carefully the National Bank Act with reference to the power given a National Bank to hold real estate and to make the contemplated improvements? A. I can not say that I have, but I assumed it was proper for a National Bank to make such investments because I knew there were other National Banks that owned buildings and occupied them for other purposes and that the First National Bank itself was already in such a position.

Q. In making up your opinion which you have expressed in your testimony in chief, did you make any figures or any calculation as to what net profits or income the Bank would have by reason of the completion of the contemplated improvements over and above its present income? A. Not in detail but in a general way I did.

Q. Then in forming your opinion with reference to the benefits in the shape of dividends which would come to the (338) Bank, as you have testified in your testimony in chief, you were rather guessing at it, were you not, or jumping at a conclusion? A. No, I wouldn't say I was guessing or jumping at a conclusion.

Q. Have you read the National Bank Act since this suit was filed, or prior to that, since, say, the first of February, with reference to the power of a National Bank to make the proposed improvements? A. Yes, sir.

Q. Explain how the contemplated changes or improvements are steps "such as shall be necessary for its (the Bank's) immediate accommodation in the transaction of its business?" A. Its property needed repairs and along those lines, in my opinion, I thought it wise and a good investment to make in connection with the Bank building or accommodations for the conduct of the Bank's business additional accommodation for offices.

Q. Have you been a borrower out of the First National Bank since Mr. Mish has been president on note?

(Objected to as irrelevant.)

A. I have been.

Q. What is the most amount of money you have had out of the Bank for yourself or on account of the firm of Steffey & Findlay, since Mr. Mish has been president of the Bank, to the best of your knowledge and recollection?

(Objected to as being irrelevant.)

A. At any time and at all times well within the legal limits.

Q. State specifically, in exact figures, the largest amount of money that you have had borrowed out of the First National Bank on note since Mr. Mish has been president of the Bank, for yourself or for the firm of Steffey & Findlay?

(Objected to as irrelevant.)

(339) A. Well within the legal limits, and at all times well secured by collateral to the satisfaction of the Bank and the Government examination.

Q. What are the legal limits to which you have referred?

(Objected to as being irrelevant.)

A. The legal limits would be $20,000.

Q. Were you a director of the First National Bank since Mr. Samuel Emmert resigned? A. Yes, sir.

Q. Do you know as a matter of fact that Samuel Emmert had, out of the First National Bank, at the time he resigned, $15,000 borrowed?

(Objected to as being irrelevant.)

A. I do not remember the amount that Mr. Emmert was indebted to the Bank at the time he resigned.

Q. The firm of Steffey & Findlay handles lumber and building material, does it not?

(Objected to as being irrelevant.)

A. Yes, sir.

Q. Did you furnish any material already to support and strengthen the first floor of the building prior to tearing it down?

(Objected to as being irrelevant.)

A. I can not remember whether several timbers that I was ordered by Mr. Lankin to send to the Bank were used for strengthening or supporting the walls or any part of the building or not. I sent several pieces of lumber to the building.

General Interrogatory.—Do you know, or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

J. GRASON STEFFEY.

(340)

Personally appeared WALTER D. WILLSON, a witness of lawful age, produced on behalf of the defendants, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. What is your full name? A. Walter D. Willson.

Q. Age? A. 49.

Q. Residence? A. 329 N. Potomac Avenue.

Q. In what town? A. Hagerstown, Md.

Q. What is your occupation? A. Wholesale liquor business.

Q. Have you any connection or business relations with the First National Bank of Hagerstown, Md., and if so, what? A. I am a director and a stockholder.

Q. Do you know the location of the lot belonging to the First National Bank of Hagerstown, Maryland? A. Yes, sir.

Q. How is it situated with reference to the business section of the town of Hagerstown?

(Objected to as being irrelevant.)

A. It is centrally located and one of the best located in the town.

Q. What has been done with the building that was on the lot? A. It has been torn down.

(341) For what purpose? A. To erect another building in its place.

Q. What kind of building is to be erected in its place?

(Objected to as being heresay testimony.)

A. A six story banking and office building.

Q. How do you know that is to be done, Mr. Willson? A. From the fact that we have gone over the plans and specifications and the Board agreed to erect the building.

Q. Have any contracts been given for the erection of the building? A. Yes, sir.

Q. When the question of tearing down the old building and erecting a new six story office building in its place was considered, state what your attitude was with reference to those changes and improvements?

(Objected to by Mr. Wingert as being irrelevant and not the best evidence that can be offered.)

A. Well, the Board of Directors generally decided that it was a good investment. It was placing their money in real estate, which is the safest investment that can be made; well for the banking purposes and to the best interests of the Bank.

Q. When the directors determined to make the changes, how did you vote on the question?

(Objected to as being irrelevant.)

A. I voted to build the new building.

Q. Then you were favorable to the proposition?

(Objected to as leading.)

A. Favorable to the proposition.

Q. Why did you vote for the erection of that building? Give your reasons at length?

(Objected to as being a mere matter of opinion.)

(342) A. Because it was for the best interests of the stockholders of the Bank, using their money in a safe way.

Q. Why did you consider that would be using money in a safe way?

(Objected to as being a mere matter of opinion.)

A. From the mere fact that the investment we figured on —renting out these offices—was giving the Bank its rent for practically nothing.

Q. For what? A. To do business in the Bank.

Q. What part of the building will be occupied for the purpose of doing a banking business? A. The lower floor.

Q. What in your judgment, is the best investment of funds you can make in Hagerstown?

(Objected to as being a mere matter of opinion and irrelevant.)

A. I consider that as one of the safest investments a man or a corporation can make.

Q. What sort of a location is the First National Bank for the purpose of offices and an office building? A. I think it is one of the best in the city.

Q. Why do you consider it one of the best in the City? A. It is centrally located and right close to the Court House. The biggest business interests of the city are mostly right around it.

Q. Do you recall the occasion when the answers to be filed in this suit were submitted to the Directors? A. Yes, sir.

Q. I don't mean the date—do you recall the occasion? A. Yes, I do.

Q. Where was it? A. In the directors' room in the rear end of the Bank building.

Q. Who brought the papers there?

(Objected to as being irrelevant.)

A. I am not sure exactly who brought them there. I (343) think they were brought in by the cashier or given to the president while we were in session.

Q. What was done with the papers on that occasion?

(Objected to as being irrelevant.)

A. They were read before the Board.

Q. Who read them?

(Objected to as being irrelevant.)

A. Mr. Little.

Q. What action, if any, did the Board take upon these papers as read?

(Objected to by Mr. H. F. Wingert on the ground of irrelevancy and as not being the best evidence that can be offered.)

A. After the reading of these papers the directors decided on it, or voted on it, and signed our names.

Q. How did they vote on it?

(Objected to as not being the best evidence that can be offered.)

A. They voted on it—I think it was an unanimous vote of the whole board present.

Q. What did they vote to do with the papers?

(Objected to by Mr. Neill on the ground that the minutes speak for themselves.)

A. Instructed the attorney to file the answer and employ an attorney to assist him.

Q. Do you remember if any of the Board were absent on that occasion? A. I can not recall that.

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

Q. There was a time within the last year or two that you owned more stock in the First National Bank than you now own, was there not? A. Yes, sir.

(344) Q. Do you remember meeting H. F. Wingert one evening about 18 months ago, or thereabouts, on the pavement on South Potomac Street somewhere between the Roessner corner and the place of business you were then running located near the present Post Office, when you inquired of H. F. Wingert about a place or an opportunity to invest some money and that he suggested to you the purchase of some bank stock as a desirable investment and that you made the remark that it paid nothing, or a remark of similar import?

(Objected to by Col. Little as being irrelevant.)

A. Yes, I remember that. I didn't say it didn't pay anything. I said it was not a very big investment, small interest.

Q. When the directors decided to make the contemplated improvements, and when the meeting was held at which you voted for them, did anyone explain to you the power of a National Bank, under the National Bank Act, to make the contemplated improvements? A. No, sir. That had been talked along the line in general with the Board, the right of doing it.

Q. Have you made any figures with reference to the net income that would accrue to the First National Bank from the contemplated improvements when completed, over and above the income which the Bank has heretofore enjoyed? A. Not personally.

Q. Do you really know how many offices are to be in the contemplated six story building? A. About 70, I believe; something like that.

Q. If you made no figures as to the net income referred to above, then how could you decide that the contemplated improvements would be a good investment to the stockholders? A. From the fact that I was with the Board when it was all (345) figured out. The Board was figuring it out at different times. Went over this carefully and showed what the investment would be to the Bank, and figured it all out.

Q. Do you remember at what meeting these figures were gone over and shown? A. No, sir, I don't exactly know the particular meeting, several times, though.

Q. State what figures were given at those meetings, as near as you can remember? A. I can not give you the amounts; I do not remember that any more, but it looked very good at the time, I know.

Q. You know William Wingert, a director, don't you? A. Yes, sir.

Q. Do you remember being present when Mr. William Wingert requested anybody and everybody around the table to be kind enough to give him the figures that would show the profits on this investment and that the figures were not produced? A. No, sir, I don't remember that.

Q. Please explain fully and at large, and to the best of your ability, how the contemplated improvements by the Bank are "steps to be taken and taken, such as shall be necessary for its (the Bank's) immediate accommodation in the transaction of its business?" A. Well, by putting a banking room there for the convenience of the National Bank and for an investment for the stockholders. I do not know if that answers your question or not.

Q. Is it a matter of fact that since Mr. Mish has been president of the Bank that you have received considerable accommodations from the Bank in the way of loans and advances

for yourself and for other concerns in which you have been interested?

(Objected to as being irrelevant.)

(346) A. Nor more than I did before I was director in the Bank.

Question is read to witness and he is asked if that is the whole of his answer?

A. That is well answered, I think.

RE-DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Counsel for defendant ask to have the last answer read to Mr. Willson and asks him if that is the way he gave his answer?

(Question and answer read to witness.)

Q. Is that the answer you intended to give? A. Well, I could make more explanation. In fact, I have been dealing at this Bank for 12 or 14 years, and I have been a borrower out of the Bank at different times.

Q. How long have you been a director in the Bank? A. Two years, or a little over.

Q. Did you deal with this Bank before you became a director? A. Yes 12 years before that.

Q. Then, did you mean to say that you didn't borrow any more after you became a director than you did before you became a director?

(Objected to as being leading.)

A. I mean to say that I didn't receive any favors from Mr. Mish because he was president of the Bank than I did from the Bank before I knew Mr. Mish was in the Bank or before I got to be a director in the Bank.

(347)

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer. I do not know anything further.

WALTER D. WILLSON.

Personally appeared FRANCIS H. MILLER, a witness of lawful age, produced on behalf of the defendants, being duly sworn, did depose and say as follows:

DIRECT EXAMINATION.

By Col. C. A. LITTLE:

Q. What is your full name? A. Francis H. Miller.
Q. Your age? A. 55.
Q. Your residence? A. 34 E. Antietam St., Hagerstown, Md.
Q. What it your occupation? A. Manufacturer.
Q. You belong to the firm of Bower & Miller, do you not? A. I do.
Q. And what do you manufacture? A. Tables.
Q. How many men do you employ at your factory?

(Objected to.)

A. 165 men and boys.
Q. Have you any connection with the First National Bank of Hagerstown, and if so what? A. I have; I am a stockholder and director.
Q. How many shares of stock do you own? A. I don't (348) know whether I can answer that question or not?
Q. About how many? A. About 183 or 185, I really don't remember which.
Q. Do you remember when the Bank took up the question of making improvements on its lot in Hagerstown, Maryland? A. I do.
Q. What was your position or attitude with reference to those improvements?

(Objected to as being irrelevant.)

A. I was in favor of them.
Q. What improvements were you in favor of?

(Objected to as being irrelevant.)

A. Erecting a six story building to be used for offices and banking purposes.
Q. How about the old building—the building that was on the lot at the time—what was your attitude with reference to that? A. I thought it ought to be torn down.
Q. What did you intend to put in its place? A. A six story building.

Q. Are you at all conversant with the plans and character of building that the Bank contemplates erecting there? A. Yes, I have seen the plans.

Q. How much of the building will be used by the Bank for banking purposes? A. The first floor.

Q. And the balance will be used for what purpose? A. Offices.

Q. State at length, Mr. Miller, why you were in favor of the proposed improvements? A. For the increase in revenue which I suppose it would bring to the stockholders of the Bank. (349) Q. What sort of an investment did you consider the investment of the funds of the Bank in a building of that kind?

(Objected to as being irrelevant and the opinion of a witness not qualified to express such opinion.)

A. A profitable investment.

Q. What effect, if any, would the erection of such a building—first floor to be used by the Bank, other floors to be rented out for offices and rents collected therefor, have upon the rental cost to the Bank of the banking room proper?

(Objected to as being irrelevant and the opinion of a witness not properly qualified to answer.)

A. It would save the expense of the Bank.

Q. What is the location of the First National Bank with reference to the business section of Hagerstown? A. I consider it one of the best in the town.

Q. What sort of a location is it for the purposes of an office building such as is contemplated by the Bank?

(Objected to as being irrelevant and the opinion of a witness not properly qualified to answer.)

A. It could not be better.

Q. Do you recall the occasion when the answers were executed to the suit filed by Mr. Wingert? A. I do.

Q. Where did that take place? A. In the directors' room of the Bank.

Q. State what was done at that meeting?

(Objected to.)

A. It was read and afterwards signed by the directors.

Q. How many papers were read, do you recall? A. I think there were two.

Q. Who read them?

(Objected to as being irrelevant.)

(350) A. Col Little.

Q. What action was taken, if any, by the Board upon those papers?

(Objected to by Mr. Wingert as not being the best evidence that can be offered.)

A. They agreed that there was to be a defense made.

Q. Do you know whether all the members of the Board of Directors were present on that occasion? A. I think so.

Q. Let me refresh your recollection and ask you whether Mr. William Wingert was present on that occasion? A. I think he was.

CROSS EXAMINATION.

By Mr. H. F. WINGERT:

Q. How long have you lived in Hagerstown? A. About 17 years.

Q. You have quite a large enterprise in Hagerstown, you and Mr. Bower, have you not? A. Yes.

Q. You are a man of considerable means, are you not, as people of means go in this community?

(Objected to as being irrelevant.)

A. Yes, I suppose I am.

Q. And you have made it nearly all yourself, have you not, by your own efforts?

(Objected to as being irrelevant.)

A. Yes.

Q. Do you have all your means invested in real estate?

(Objected to as being irrelevant.)

A. No, sir.

(351) Q. Don't you have a large amount of money invested in life insurance companies?

(Objected to as being irrelevant.)

A. Yes, I do.

Q. Outside of Washington County? A. No.

Q. The head offices of the company I mean are outside of Washington County—not incorporated here? A. No, the companies are not incorporated here.

Q. In making your investments in life insurance and in other places, don't you figure rather closely before you make them on the income that is to come to you and the benefits in a financial way to be derived?

(Objected to as being irrelevant.)

A. Yes, sir.

Q. You figure all business propositions of your own, in considering them, right closely and carefully, do you not? A. As a rule.

Q. Do you remember that a real estate agent in the town here, a year or two ago, offered to sell you a double brick house on West Franklin street which I own, and after hearing the rents, etc., you concluded it was not a good investment from the standpoint of income?

(Objected to as being irrelevant.)

A. Never to my knowledge.

Q. Have you invested out of your means any money in real property on the Public Square or on West Washington street between the Public Square and Jonathan street, or on Potomac street between Franklin street and Antietam street?

(Objected to as being irrelevant.)

(352) A. No.

Q. Some properties within that territory have been sold at public sale in recent years, have they not?

(Objected to as being irrelevant.)

A. Yes.

Q. Have you been a bidder on any of them?

(Objected to as being irrelevant.)

A. No, sir.

Q. You and your family and you personally, and Mr. Bower and some members of his family, have taken stock in the

Maryland Surety & Trust Company, just opposite the First National Bank, have you not?

(Objected to as being irrelevant.)

A. We have.

Q. Are you in any way connected with the Maryland Surety & Trust Company?

(Objected to.)

A. A director.

Q. How long have you been a director? A. Not quite a year.

Q. When was the company organized? A. The first of last June; just a year ago.

Q. And you became a director when it was organized? A. I did.

Q. Do you remember that it was currently reported about that the Maryland Surety & Trust Company contemplated tearing down their present building and erecting a high building on the site?

(Objected to as being irrelevant.)

A. I never heard it.

(353) Q. Is it, or is it not a matter of fact that it was talked of at a meeting of the Board of Directors?

(Objected to as being irrelevant.)

A. No, sir, not in my presence.

Q. Do you know that it has been reported in the newspapers that the Maryland Surety & Trust Company purchased a very elaborate and very safe and strong iron vault or safe?

(Objected to as being hearsay evidence.)

A. I never saw it if it was.

Q. Is it or is it not a fact that the Maryland Surety & Trust Company has purchased for delivery a large vault and equipment?

(Objected to as being irrelevant.)

A. They have.

Q. A very expensive one, is it not?

(Objected as being irrelevant.)

A. Not very.
Q. What did it cost?

(Objected to as being irrelevant.)

A. I can not answer.
Q. Do you know whether the Maryland Surety & Trust Company contemplate enlarging their banking room? A. They do.

Q. Has the question of the tearing down and building a higher building than the present building of the Maryland Surety & Trust Company been discussed by the Trust Company directors on the site of their present bank?

(Objected to as being irrelevant.)

A. I do not care to answer that question. I do not really think that has anything to do with this case. I do not like (354) to tell things that were talked about in the Bank at any time. I wouldn't tell it if it was talked about in any other bank I am connected with; I don't think it is right.

Q. How is the building of the Maryland Surety & Trust Company located with reference to the First National Bank? A. Directly opposite.

Q. Isn't the area way, or open space, between the Maryland Surety & Trust Company building and the Court House just across the alley wider than the area space between the First National Bank building and the Hotel Hamilton? A. I think it is.

Q. Then isn't the location of the lot of the Maryland Surety & Trust Company at last as good a location for an office building as the location of the lot of the First National Bank?

(Objected to as being irrelevant.)

A. I think it is.

Q. Do you or do you not know that there are some offices vacant now on the third floor, and even on the second floor, of the Maryland Surety & Trust Company building and that some of these offices have been vacant for a long time?

(Objected to as being irrelevant.)

A. I do not know anything about it.

Q. You stated above that you, in your own business, before accepting business propositions, make close figures on the proposition; state if you have made close and careful figures

on the proposition of the proposed improvements of the First National Bank, of which you are a director? A. I have not.

Q. Then, when you stated that revenue to the First Na-
(355) tional Bank after the contemplated improvements are made, and the reduction of the rent of the banking room to the Bank after the contemplated improvements, you did not make that statement as the result of any close and careful figures you have made on the subject; is that a fact? A. Yes.

Q. When you voted with the majority of the directors of the First National Bank for contemplated improvements, were you familiar with the National Bank Act governing or touching upon the power of a National Bank to hold real estate? A. I heard it discussed.

Q. Explain as best you can how the contemplated improvements by the First National Bank are "steps such as shall be necessary for its (the Bank's) immediate accommodation in the transaction of its business?" A. Do you mean the present building that they have rented?

Q. The contemplated improvements?

(Question read to witness.)

A. I do not know that I understand your question.

(Question re-read to witness.)

A. By the erection of the new building.

By the COMMISSIONER: Do you understand the question, Mr. Miller? A. I think so.

RE-EXAMINATION.

By Col. C. A. LITTLE:

Q. You don't mean to say that the whole of the building will be necessary for the Bank for its business, do you?

(Objected to by Mr. Neill, as leading.)

A. No, sir.

(356) Q. But you say, do you not, that the first floor will be occupied by the Bank and the upper floors rented out?

(Objected to as leading.)

A. Yes, for office purposes.

General Interrogatory.—Do you know or can you state any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. Answer.—I do not know anything further.

FRANCIS H. MILLER.

At this point the counsel for the defendants announced his testimony closed.

UNITED STATES OF AMERICA.)
District of Maryland, } to-wit:

(357) Be it remembered that in pursuance of an agreement between counsel for Lewis P. Wingert and the First National Bank and others, parties complainant and defendants, respectively, in the above entitled cause, I, Alexander R. Hagner, U. S. Commissioner for the District of Maryland, at Hagerstown, was appointed to take depositions of witnesses in said cause, and the counsel for the above complainant and defendants agreeing that verbal notice of the taking of testimony in said cause by either party would be sufficient notice thereof.

I therefore certify, that on this 2nd day of June, 1909, at my office, No. 1 Mealey Row, South Jonathan St., Hagerstown, Maryland, personally appeared before me, on said 2nd day of June, 1909, Harvey Heyser, Frank W. Mish, and on the 4th day of June, 1909, personally appeared before me, Harry W. Rouskulp, C. M. Horst, Nervin J. Brandt, and on the 9th day of June, 1909, personally appeared before me, J. H. Snavely, Rufus Crim, H. S. Snavely, L. T. Beachley, Landon Kerney, Harry D. Burger, W. O. Diehl, J. Winger Draper, C. McP. Smith, Frank M. Wroe, E. E. Dyer, J. E. Downin, Earl Troup, and on June 10th, 1909, personally appeared before me, George F. Burkhart, Wolfgang M. Newcomer, Daniel W. Doub, J. O. Snyder, and on June 11th, 1909, personally appeared before me, Louis Rose, Dr. Charles McCauley, Samuel Emmert, J. Grason Steffey, Walter D. Willson, and Francis H. Miller, and all having been by me first sworn to testify the truth relative to the matters inquired of, severally gave the annexed depositions by them severally signed; said depositions were taken down in shorthand by a stenographer, Miss Carrie Barr, and (358) by her transcribed on the typewriter, as per agreement by counsel for both the complainant and defendants.

Henry F. Wingert, Miller Wingert, and Alexander Neill, Jr., appeared before me to represent the complainant and Col. Charles A. Little to represent the defendants.

That the defendants also filed as Exhibits in the above entitled cause the *follows*:

"Defendants' Exhibit List of Stockholders," "Defendants' Exhibit Deed," "Defendants' Exhibit Organization Certificate," "Defendants' Exhibit Consent of Charles McCauley and Daniel W. Doub, Committee of Harry McCauley, *non compos*, and of Charles McCauley, M. D.," "Exhibit Furst, Exr. of Bowman," "Exhibit Pearson, Exr. of Bowman," "Exhibit Decree," and "Exhibit Consent of Stockholders to Improvements," and Exhibits folios 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 of "Exhibit Consent of Stockholders to Improvements." The annexed depositions with the aforesaid Exhibits, were taken to be read at the hearing of the above entitled cause in the U. S. *District* Court for the District of Maryland, at Baltimore, no date for said hearing being known to the Commissioner.

I certify that said depositions have been retained in my possession for the purpose of forwarding them to the court for which they were taken.

I further certify that I am not of counsel in any way in said cause and have no interest in the same.

In testimony whereof, I have hereunto set my hand and seal this 12th day of June, 1909.

(359) ALEX. R. HAGNER,
Commissioner of the Circuit Court of the
[Commissioner's Seal] United States for the District of
Maryland.

**DEFENDANTS' EXHIBIT PEARSON, EXR. OF BOWMAN.**

(360) Filed June 14th, 1909.

UNITED STATES OF AMERICA.

State of Maryland.

To all whom these presents shall come or may concern:

Know ye, that on the 12th day of February, A. D., 1892, before the Orphans' Court of Washington County, duly thereunto elected, commissioned and qualified according to the Constitution of the State of Maryland, the last will and testament of George R. Bowman, late of said county, deceased, was in due form of law admitted to probate; and that on the 9th day of March, A. D., 1892, Letters Testamentary of all and singular

the goods, chattels, rights and credits, which were of the said deceased, or in any manner or way concerning his said last Will and Testament, were granted unto George C. Pearson, one of the Executors in and by the said Will named and appointed, he having first entered into bond with approved security for the due performance thereof according to law.

In testimony whereof, I, Thos. E. Hilliard, Register of Wills for Washington County aforesaid, do hereunto set my hand and affix the seal of the Orphans' Court of Washington County, this 4th day of June, A. D., 1909.

THOS. E. HILLIARD,
[Seal] Register of Wills.

STATE OF MARYLAND,
Washington County, } to-wit:

I, William Gassman, Chief Judge of the Orphans' Court of Washington County, in the State of Maryland, do hereby certify that Thos. E. Hilliard is the Register of Wills, in and (361) for the county aforesaid, and that the foregoing attestation by him is made in due form and by the proper officer.

In witness whereof, I do hereunto set my hand and affix my seal, at Hagerstown, in said county, this 4th day of June, A. D., 1909.

WM. GASSMAN, [L. S.]
Chief Judge.

STATE OF MARYLAND,
Washington County, } to-wit:

I, Thos. E. Hilliard, Register of Wills for Washington County, in the State of Maryland, do certify that William Gassman, Esq., who appears to have taken and signed the foregoing attestation, was at the time of taking and signing the same, and still is, the Chief Judge of the Orphans' Court of Washington County aforesaid, duly thereunto elected, commissioned and qualified, according to the Constitution of the State of Maryland aforesaid, and to all his acts as such full faith and credit are and ought to be given, as well in courts of justice as thereout.

In testimony whereof, I do hereunto set my hand and affix the seal of the Orphans' Court of Washington County, this 4th day of June, A. D., 1909.

THOS. E. HILLIARD,
[Seal] Register of Wills.

## DEFENDANTS' EXHIBIT DEED.

(362) Filed June 14th, 1909.

This deed made this twenty-eighth day of April in the year one thousand eight hundred and fifty-seven by J. Dixon Roman, trustee as hereinafter mentioned of the one part, Witnesseth: that Whereas Levi Easton, of the City of Baltimore, and Hezekiah Easton, of Franklin County, in the State of Pennsylvania, by deed dated February 24th, 1857, conveyed certain property in said City of Baltimore and certain real estate situate in Hagerstown, Washington County, in the State of Maryland, including the lot and dwelling house hereinafter particularly described, I, the said J. Dixon Roman in Trust to sell and dispose of the same for the purposes therein mentioned as by reference to said deed recorded in liber I. N. No. 11, folio 600 &c., one of the land records for Washington County, will more fully appear.

And whereas at the date of said deed the property hereinafter described was advertised in the name of said Levi Easton to be sold at public sale which the said J. Dixon Roman as trustee adopted and afterwards at the time and place therein named sold the said property hereinafter described at public auction to the The Hagerstown Savings Bank for the sum of thirty-five hundred and twenty dollars which sum has been fully paid to said trustee and in consideration thereof the said J. Dixon Roman, trustee as aforesaid doth grant unto the said The Hagerstown Savings Bank all that brick dwelling house and lot of ground situate on the north side of West Washington street in Hagerstown fronting on said street about forty-two feet and extending back about two hundred and forty feet to an alley bounded on the west by an alley which separates it from the property of Thomas Harbine, Esq., being the same (363) property heretofore conveyed to said Levi Easton by a certain George Kealhofer and now occupied in part by said Savings Bank with all the privileges and appurtenances, subject to the ground rent reserved by the proprietor of said town. Witness my hand & seal.

J. DIXON ROMAN, Trustee. [Seal]

Test: J. COOK.

STATE OF MARYLAND,
Washington County, } to-wit:

I hereby certify that on this 28th day of April, in the year eighteen hundred and fifty-seven, before the subscriber, a Justice of the Peace, personally appeared the within named J.

Dixon Roman, Trustee, and acknowledged the foregoing deed to be his act and deed.

Witness my hand & seal. Acknowledged before

J. COOK, J. P.

STATE OF MARYLAND,
Washington County, to-wit:

I hereby certify that the foregoing is a true copy taken from Liber I. N. No. 11, folios 771 & 772, one of the land records of Washington County, the same having been recorded May 14th, 1857.

In testimony whereof I hereunto subscribe my name and affix the seal of the Circuit Court for Washington County this 25th day of March, A. D., 1909.

[Seal]

HARRY E. BAKER,
Clerk of the Circuit Court for Washington County.

STATE OF MARYLAND,
Washington County, to-wit:

I, A. Hunter Boyd, Chief Judge of the Fourth Judicial Circuit of the State of Maryland comprehending the counties of Washington, Allegany & Garrett, do certify that the foregoing attestation of Harry E. Baker, Clerk of the Circuit Court for Washington County aforesaid is in due form and by
(364) the proper officer.

Given under my hand this 21st day of May, 1909.

A. HUNTER BOYD.

STATE OF MARYLAND,
Washington County, to-wit:

I hereby certify that it appears by the records and proceedings of the Circuit Court for Washington County aforesaid that the Hon. A. Hunter Boyd who appears to have signed the above certificate was at the time of so doing Chief Judge of the Fourth Judicial Circuit of the State of Md., comprehending the counties of Washington, Allegany and Garrett, duly commissioned and qualified and that to all acts by him done in that capacity, full faith and credit are due and ought to be given, as well in courts of justice as thereout.

In testimony whereof I hereunto subscribe my name and affix the seal of the Circuit Court for Washington County at Hagerstown, this —- day of ———, A. D., 1909.

[Seal]

HARRY E. BAKER,
Clerk of the Circuit Court for Washington County, Maryland.

## DEFENDANTS' EXHIBIT DECREE.

(365) Filed June 14th, 1909.

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY. IN EQUITY.

Charles McCauley
*vs.*
Harry McCauley. } No. 5518 Equity.

Upon the aforegoing petition it is ordered this 20th day of May, A. D., 1899, by the Circuit Court for Washington County sitting as a Court of Equity that the order of the court passed on the 31st day of March, A. D., 1899, appointing Charles McCauley, M. D., Committee of the person and estate of Harry McCauley *non compos* be and is hereby revoked and that Charles McCauley & Daniel W. Doub, Esq., be and are hereby appointed Committee of the person and estate of Harry McCauley, *non compos* in the above entitled cause with full power and authority to care for the person and manage the estate of the said Harry McCauley and it is further ordered that before proceeding in the discharge of their trust they shall file their bond to be approved by the clerk of this court in the penalty of eighty thousand dollars ($80,000) for the faithful discharge of their trust.

EDWARD STAKE.

STATE OF MARYLAND,
Washington County, } *ss:*

I hereby certify that the aforegoing is a true copy of decree filed in the aforegoing cause.

In testimony whereof I hereunto subscribe my name and affix the seal of the Circuit Court for Washington County, at Hagerstown, this 4th day of June, A. D., 1909.

[Seal]

HARRY E. BAKER, Clerk.

STATE OF MARYLAND,
Washington County, } to-wit:

(366) I, A. Hunter Boyd, Chief Judge of the Fourth Judicial Circuit of the State of Maryland, comprehending the counties of Washington, Allegany and Garrett, do certify that the foregoing attestation of Harry E. Baker, Clerk of the Circuit Court for Washington County aforesaid is in due form and by proper officer.

Given under my hand this 5th day of June, A. D., 1909.

A. HUNTER BOYD.

STATE OF MARYLAND,
Washington County, to-wit:

I hereby certify that it appears by the records and proceedings of the Circuit Court for Washington County aforesaid that the Hon. A. Hunter Boyd who appears to have signed the above certificate was at the time of so doing Chief Judge of the Fourth Judicial Circuit of the State of Maryland comprehending the counties of Washington, Allegany and Garrett duly commissioned and qualified and that to all acts by him done in that capacity full faith and credit are due and ought to be given as well in Courts of Justice as thereout.

In testimony whereof I hereunto subscribe my name and affix the seal of the Circuit Court for Washington County at Hagerstown, this — day of June, A. D., 1909.

[Seal] HARRY E. BAKER, Clerk.

**DEFENDANTS' EXHIBIT FURST, EXR. OF BOWMAN.**

(367) Filed June 14th, 1909.

UNITED STATES OF AMERICA.

State of Maryland.

To all whom these presents shall come or may concern:

Know ye, that on the 11th day of July, A. D., 1902, before the Orphans' Court of Washington County, duly thereunto elected, commissioned and qualified according to the Constitution of the State of Maryland, the last Will and Testament of Catherine B. Bowman, late of said county, deceased, was in due form of law admitted to probate; and that on the 11th day of July, A. D., 1902, Letters Testamentary of all and singular the goods, chattels, rights and credits, which were of the said deceased, or in any manner or way concerning his said last Will and Testament, were granted unto Clyde B. Furst, the Executor in and by the said Will named and appointed, he having first entered into bond with approved security for the due performance thereof according to law.

In testimony whereof, I, Thos. E. Hilliard, Register of Wills for Washington County, aforesaid, do hereunto set my hand and affix the seal of the Orphans' Court of Washington County, this 4th day of June, A. D., 1909.

THOS. E. HILLIARD,
[Seal] Register of Wills.

STATE OF MARYLAND,
Washington County, to-wit:

I, William Gassman, Chief Judge of the Orphans' Court of Washington County, in the State of Maryland, do hereby certify that Thos. E. Hilliard is the Register of Wills, in and for the County aforesaid, and that the foregoing attestation by him is made in due form and by the proper officer.

(368) In witness whereof, I do hereunto set my hand and affix my seal, at Hagerstown, in said county, this 4th day of June, A. D., 1909.

WM. GASSMAN, [L. S.]
Chief Judge.

STATE OF MARYLAND,
Washington County, to-wit:

I, Thos. E. Hilliard, Register of Wills for Washington County, in the State of Maryland, do certify that William Gassman, Esq., who appears to have taken and signed the foregoing attestation, was at the time of taking and signing the same, and still is, the Chief Judge of the Orphans' Court of Washington county, aforesaid, duly thereunto elected, commissioned and qualified, according to the Constitution of the State of Maryland aforesaid, and to all his acts as such full faith and credit are and ought to be given, as well in courts of justice as thereout.

In testimony whereof, I do hereunto set my hand and affix the seal of the Orphans' Court of Washington County, this 4th day of June, A. D., 1909.

THOS. E. HILLIARD,
[Seal] Register of Wills.

## DEFENDANTS' EXHIBIT CONSENT OF CHARLES McCAULEY, M. D. & DANIEL W. DOUB, COMMITTEE OF HARRY McCAULEY NON COMPOS AND OF CHARLES McCAULEY, M. D., TO IMPROVEMENTS.

(369)

Filed June 14th, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland. } In Equity

Whereas Charles McCauley, M. D. of Hagerstown, Maryland, one of the Committee for his brother, Harry McCauley, non compos, signed a paper of which the following is a copy,

"We, the undersigned stockholders of the First National Bank of Hagerstown, Md. do hereby express our confidence in the judgment and ability of the present board of Directors of said Bank, and we hereby further desire to concur in the plans of said Directors to erect a modern Bank and Office Building upon the present lot owned by the First National Bank and located on the North side of West Washington Street in Hagerstown, Md. which site the First National Bank has owned and occupied for more than forty years

CHARLES McCAULEY, M. D., 794 shares"

and whereas the said Charles McCauley M. D. owns and has certificates of stock standing in his name for three hundred and eighty-two (382) shares and the said Charles McCauley and Daniel W. Doub, the duly appointed, qualified and acting Committee for Harry McCauley, non compos have four hundred and twelve (412) shares standing in their names as Committee for said Harry McCauley, non compos, and whereas the (370) said Charles McCauley, M. D., is the only brother and heir at law of said Harry McCauley, and being a directors of the First National Bank of Hagerstown, Md. has always voted said stock at the annual meeting of the stockholders for the election of Directors, with the sanction and approval of the

said Daniel W. Doub, his co-committee for the said Harry McCauley, non compos as aforesaid and in pursuance of an agreement and understanding with the said Daniel W. Doub, made at the time of their appointment as such Committee by the Circuit Court for Washington County, sitting as a Court of Equity,

Now, therefore, in consideration of the premises, we, the said Charles McCauley and Daniel W. Doub, the duly appointed, qualified and acting Committee for Harry McCauley, non compos do hereby ratify, confirm and approve the actions of said Charles McCauley M. D. in signing the said certificate, expressing confidence in the judgment and ability of the Directors of the First National Bank of Hagerstown, Md. and we, Committee as aforesaid "further desire to concur in the plans of said Directors to erect a modern Bank and Office Building upon the present lot owned by the First National Bank and located on the north side of West Washington Street in Hagerstown, Md., which side the First National Bank has owned and occupied for more than forty years."

C. McCAULEY, M. D.
DANIEL W. DOUB,
Committee for Harry McCauley, non compos.

June 4, 1909. 412 Shares.

Whereas C. McCauley, M. D. signed a consent for the improvements to the 1st National Bank of Hagerstown Md., as the owner of 794 shares thereof & whereas the said Charles McCauley M. D., is in his individual right the owner of only 382 shares, 412 shares having been signed for as above set forth (371) by C. McCauley, M. D., & Daniel W. Doub, Com. for Harry McCauley non compos, The said Charles McCauley, M. D. Does hereby ratify and confirm his consent to the improvements and building of a new banking & office building as to said 382 shares instead of 794 shares.

C. McCAULEY, M. D.

**DEFENDANTS' EXHIBIT ORGANIZATION CERTIFICATE.**

(372) Filed June 14th, 1909.
E. S.
E. F. Q. *Certificate of Copy.*
OT.

Treasury Department,
Office of the
Comptroller of the Currency. } ss.

Under the provisions of Section 884 of the Revised Statutes of the United States, I, Lawrence O. Murray, Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original Organization Certificate of The First National Bank of Hagerstown, Maryland, and of the whole of such original on file and of record in this Office.

In Testimony Whereof, I have hereunto subscribed my name, and caused my seal of office to be affixed to these presents at the Treasury Department, in the City of Washington and District of Columbia, this 21st day of May, A. D. 1909.

LAWRENCE O. MURRAY,
[Seal.] Comptroller of the Currency.

U. S.
Int. Rev.
Stamp.
Canceled.
5c.

ORGANIZATION CERTIFICATE.

(373) We, the undersigned, The Directors of The Hagerstown Savings Bank, in the State of Maryland, do hereby declare that the owners of three-fourths of the capital stock of said Bank have authorized the directors of said Bank to make the necessary Organization Certificate, and to change and convert the said Bank into a National Association, under the provisions of the act of Congress entitled "An Act to provide a National Currency, secured by a pledge of United States Bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, and by virtue of said authority, and in accordance with the provisions and requirements of the forty-fourth section of said Act, we do hereby make and execute this Organization Certificate.

First. The name and title of this Association shall be The First National Bank of Hagerstown.

Second. The said Association shall be located and continued in the Town of Hagerstown, county of Washington, and

State of Maryland, where its operations of discount and deposit are to be carried on.

Third. The capital stock of this Association shall be sixty-nine thousand and seventy dollars, ($69,070) and the same shall be divided into six thousand nine hundred and seven shares of ten dollars each, as it is now divided in the said Hagerstown Savings Bank.

Fourth. The name and residence of each of the Stockholders of the said Hagerstown Savings Bank which is to become a National Bank under the provisions of the act of Congress aforesaid, and the number of shares of ten dollars each, held (374) by each stockholder, are as follows:

| Name. | Residence. | No. of Shares. |
|---|---|---|
| P. B. Small, | Hagerstown, Wash. Co., Md., | 204 |
| Chas. G. Lane, | Do. Do. | 518 |
| Geo. Schley, | Do. Do. | 62 |
| Isaac Nesbitt, | Do. " | 113 |
| David H. Neucomer, | " " | 50 |
| John Knodle, | " " | 156 |
| John J. Hershey, | " " | 50 |
| Richard Scheckles, | " " | 10 |
| Louis F. McComas, | " " | 156 |
| Thomas Hagerman, | " " | 250 |
| John McKee, | Washington County, | 43 |
| Henry I. Eavey, | " " | 61 |
| Samuel Goakle, | Hagerstown, " | 221 |
| Wm. H. Protzman, | " " | 182 |
| Henry A. Horine, | Washington Co., " | 15 |
| Henry Winters, | Hagerstown, " | 43 |
| F. Dorsey Herbert, | " " | 110 |
| Rebecca Herbert, | " " | 15 |
| E. Harrison Hagerman, | " " | 250 |
| Geo. R. Bowman, | " " | 111 |
| Samuel Seibert, | " " | 100 |
| Rosanna Bovey, | " " | 55 |
| N. B. Scott, | " " | 59 |
| Upton Rouskulp, | " " | 60 |
| Henry McCaully, | Washington Co., " | 347 |
| David Artz, | Hagerstown, " | 80 |
| (375) | | |
| A. E. Herbert, | Hagerstown, Wash. Co., Md., | 30 |
| F. J. Posey, | Do. " | 77 |
| H. K. Tice, | Do. " | 31 |
| H. K. Tice, Treas. M. Ins. Co. | Do. " | 100 |
| Mary A. Funk, | " " | 103 |

| Name. | Residence. | | No. of Shares. |
|---|---|---|---|
| Joshua Emmert, | Washington Co., | " | 20 |
| Jacob Humrickhouse, | Do. Do. | " | 28 |
| D. C. Aughinbaugh, Ex. of C. Winters, | Hagerstown, | " | 90 |
| Catharine Boyd, | Washington Co., | " | 130 |
| Samuel Roushkulp, | Hagerstown, | " | 100 |
| Sophia C. Miller, | Do. | " | 46 |
| Joseph Neucomer, | Do. | " | 31 |
| J. F. Smith, | Washington Co., | " | 80 |
| John J. Troup, | Do. Do. | " | 50 |
| David Coffman, | Do. Do. | " | 10 |
| Wm. V. Heard, | Hagerstown, | Do. | 31 |
| John H. Kansler, | Do. | Do. | 150 |
| Peter Suartzwelder, | Do. | Do. | 19 |
| Thos. E. Mittag, Trustee of S. Mittag, | Do. | Do. | 16 |
| Thos. E. Mittag, Trustee of S. McCameron, | Do. | Do. | 14 |
| Jas. J. Hurley, | Do. | Do. | 31 |
| Thos. A. Bouelt, | Do. | Do. | 100 |
| Joel Schlapen, | Washington Co. | | 50 |
| Mary S. Heard, | Hagerstown, | " | 50 |
| A. K. Stake, | Do. | " | 55 |
| Benjamin Reigle, | Do. | " | 181 |
| A. R. Heneberger, | Do. | " | 195 |
| Catharine Hammond, | Do. | " | 73 |
| Mary Protzman, (376) | Do. | " | 52 |
| Salome Protzman, | Do. | " | 46 |
| Mary H. Schley, | Do. | " | 120 |
| A. Buchanan, | Washington Co., | " | 54 |
| A. V. Barr, | Hagerstown, | " | 20 |
| Catharine Cushua, | Do. | " | 30 |
| Henry Freaner, | Do. | " | 1 |
| Gollead Encampment I. O. O. F., | Do. | " | 54 |
| Wm. F. Gellnick Est. | Do. | " | 45 |
| Catharine Handy, | Do. | " | 23 |
| Lewis Heist, | Do. | " | 8 |
| Hester Hathorne, | Do. | " | 23 |
| Jonathan Hager, | Do. | " | 23 |
| Harriet Hall, | Do. | " | 10 |
| R. L. Hughes, | Do. | " | 30 |
| Margaret Hemberger, | Do. | " | 10 |
| Simon Knode, | Wash. Co. | " | 20 |

| Name. | Residence. | No. of Shares. |
|---|---|---|
| E. J. Keller, | Hagerstown, " | 25 |
| M. S. Kimkle, | " " | 10 |
| Wm. McCardle, | " " | 16 |
| Jacob Miller, | Washington Co., " | 75 |
| Cath. McCardle, | Hagerstown, " | 27 |
| Michael Miller, | Wash. Co., " | 57 |
| Alex. Neille, | Hagerstown, " | 23 |
| Samuel Ogelby, | Do. " | 30 |
| Eliza Posey, | Do. " | 38 |
| Sarah Post, | Do. " | 10 |
| Daniel Petre, | Do. " | 40 |
| Daniel Rohrback, | Fred. Co., " | 66 |
| John D. Ridenour, | Hagerstown, " | 8 |
| John R. Snearey, | Baltimore, " | 82 |
| (377) | | |
| Abraham Stouffer, | Washington Co., Md., | 41 |
| E. Stake, | " " " | 20 |
| R. Stake, | " " " | 10 |
| M. A. Smith, | " " " | 123 |
| Abijah Smith, | " " | 100 |
| M. Spickler, | " " | 15 |
| E. E. Smith, | " " | 45 |
| Chas. Spangler, | Hagerstown, " | 23 |
| A. A. Small, | " " | 1 |
| Mary Tice, | " " | 8 |
| James Wasson, | Baltimore, " | 20 |
| F. Winders, | Washington Co., " | 76 |
| R. Sneary in Trust, Isaac Nesbitt & Jno. | Hagerstown, | 137 |

Fifth. This Certificate is made, in order that the said Hagerstown Savings Bank and the Stockholders thereof, may avail themselves of the advantages of the aforesaid act, and that the said Hagerstown Savings Bank may be changed and converted into a National Banking Association, under the name and title of The First National Bank of Hagerstown.

In witness whereof, we have hereunto set our hands, this second day of May, eighteen hundred and sixty-five.

CHAS. G. LANE,
JOHN KNODLE,
JOHN J. HERSHEY,
GEORGE SCHLEY,
R. SHECKLES,
ISAAC NESBITT.

STATE OF MARYLAND, }
County of Washington, } *ss:*

(378) On this second day of May, A. D., 1865, personally came before me, a Notary Public of said county, Charles G. Lane, John Knodle, John J. Hershey, George Schley, R. Sheckles, Isaac Nesbitt, Directors of the Hagerstown Savings Bank, to me well known, who severally *acknowledge* that they executed the foregoing certificate for the purposes therein mentioned.

Witness my hand and seal of office the day and year aforesaid.

M. S. BARBER,
[Seal] Notary Public.

## DEFENDANTS' EXHIBIT LIST OF STOCKHOLDERS.

(379) Filed June 14, 1909.

LIST OF THE STOCKHOLDERS OF THE FIRST NATIONAL BANK OF HAGERSTOWN, MARYLAND.

*First National Bank 87th Dividend, January, 1909.*

| | Residence. | No. Shares. |
|---|---|---|
| Ankeney, Catherine, | Clearspring, Md. | 25 |
| Appleman, Maggie S., | Hagerstown, Md. | 16 |
| Antietam Tribe No. 46, | Hagerstown, Md. | 16 |
| Ankeney, David H., | Clearspring, Md. | 49 |
| Ankeney, S. Findlay, | Clearspring, Md. | 28 |
| Ankeney, George M., | Clearspring, Md. | 27 |
| Ankeney, Alfred A., | Hagerstown, Md. | 153 |
| Ankeney, Isaac, | Clearspring, Md. | 10 |
| Baker, A. D., | Keedysville, Md. | 30 |
| Burkhart, Sophia B. C., | Hagerstown, Md. | 200 |
| Boyer, D. S., | Hagerstown, Md. | 30 |
| Bowie, Washington | Baltimore City, Md. | 3 |
| Barr, Mary E., | Hagerstown, Md. | 60 |
| Barkman, David W., | Boonsboro, Md. | 12 |
| Bethany Church, (Downsville) | Downsville, Md. | 70 |
| Bovey, Mary Jane, | Clearspring, Md. | 60 |
| Bowman, David E., | Benevola, Md. | 25 |
| Bowman, Clara E., | Benevola, Md. | 20 |
| Boswell, Mary T., | Clearspring, Md. | 8 |
| Bower, John G., | Hagerstown, Md. | 122 |
| Bowers, F. Annette, | Winchester, Va. | 13 |

(380)

| Residence. | No. Shares. |
|---|---|
| Amount brought over | 977 |
| Baker, B. F. Keedysville, Md | 66 |
| Baker, Solomon, Hagerstown, Md | 20 |
| Boyd, Lucy V., Clearspring, Md | 12 |
| Beckenbaugh, Mary I., Hagerstown, Md | 30 |
| Brining, Lilliam Kemp, Hagerstown, Md | 150 |
| Beard, Mrs. J. O., Hagerstown, Md | 12 |
| Coffman, Ella Keedysville, Md | 47 |
| Campbell, Julia Cumberland, Md | 4 |
| Coffman, Mrs. Estelle E., Keedysville, Md | 23 |
| Cline, Martha, Downsville, Md | 63 |
| Coffman, Willioughby, Keedysville, Md | 16 |
| Coffman, Grace, Keedysville, Md | 16 |
| Coffman, Louis M., Keedysville, Md | 16 |
| City Sav. Bank, Hagerstown, Md | 59 |
| Coffman, Charles D., Fairplay, Md | 106 |
| Coffman, C. Estelle, Fairplay, Md | 107 |
| Clowe, Asbarina, Winchester, Va | 14 |
| Chany, Laura C., Venevola, Md | 2 |
| Doub, Daniel W., "Trustee," Hagerstown, Md | 16 |
| Downs, Sarah Williamsport, Md | 10 |
| Downs, C. D., Williamsport, Md | 4 |
| Doub, D. W., Trustee M. B. Doub, Hagerstown, Md | 86 |
| Doub, Daniel W., Hagerstown, Md | 9 |
| Drydale, Rose W., Hagerstown, Md | 5 |
| Davison, Francis Winger, Greencastle, Pa | 6 |
| Folts, Daniel W., Boonsboro, Md | 51 |
| Foltz, Carolina, Boonsboro, Md | 15 |
| Furst, Clyde B., Executor Cath. E. Bowman, Yonkers, N. Y. (381) | 37 |
| Amount brought over | 1,968 |
| French, Robert B., Hagerstown, Md | 10 |
| Furst, Clyde B., Yonkers, N. Y. | 25 |
| Greenswalt, Margaret, Greencastle, Pa | 11 |
| Gilead Encampment, Hagerstown, Md | 145 |
| Gilbert, George W., Boonsboro, Md | 69 |
| Groh, D. Webster, Hagerstown, Md | 4 |
| Groh, Laura E., Brethedsville, Md | 4 |
| Groh, Samuel M., Brethedsville, Md | 4 |
| Groh, John C. F., Waynesboro, Pa | 4 |
| Hunter, Nise A. Olivia Funkstown, Md | 79 |
| Hurley, William J., Hagerstown, Md | 129 |
| Hagerman, E. H., Dec'd., Williamson, Pa | 400 |
| Harne, R. Lee, Hagerstown, Md | 71 |
| Hurley, Josephine A., Hagerstown, Md | 111 |

| | Residence. | No. Shares. |
|---|---|---|
| Hartle, Samuel E., | Hagerstown, Md. | 20 |
| Hartle, Alice Nancy, | Hagerstown, Md. | 19 |
| Hershey, Margaret | Hagerstown, Md. | 4 |
| Hutzell, Thomas A., | Keedysville, Md. | 16 |
| Horst, C. M., | Hagerstown, Md. | 19 |
| Hunter, George H., | Hagerstown, Md. | 10 |
| Kline, Newton, | Dry Run, Pa. | 33 |
| Kellar, Elizabeth, J., | Hagerstown, Md. | 25 |
| Kemp, Mrs. B., | Williamsport, Md. | 20 |
| Keedy, M. L., | Hagerstown, Md. | 1 |
| Kline, Lucina, | Dry Run, Pa. | 21 |
| Kausler, Prudence C., | Hagerstown, Md. | 217 |
| Kountz, Margaret L., | Hagerstown, Md. | 2 |
| Lutheran Church, (Trinity) | Smithsburg, Md. | 23 |
| Lewis, Grace L., | Hagerstown, Md. | 2 |
| (382) | | |
| Amount brought over | | 3,468 |
| Little, C. A., | Hagerstown, Md. | 25 |
| McCartney, J. S., | Washington, D. C. | 37 |
| McKee, Miss Olivia, | Hagerstown, Md. | 140 |
| McKee, Stanley J., | Hagerstown, Md. | 150 |
| Mutual Fire Ins. Co., | Hagerstown, Md. | 45 |
| Murray, Miss Fannie, | Hagerstown, Md. | 10 |
| Mish, Frank W., | Hagerstown, Md. | 303 |
| McKee, William C., | Hagerstown, Md. | 33 |
| McKee, C. E. S. & Wm. C., | Hagerstown, Md. | 201 |
| McCauley, Charles M., | Hagerstown, Md. | 382 |
| C. M. McCauley, D. W. Doub, Committee for H. McCauley, (Non compos) | Hagerstown, Md. | 412 |
| Miller, Francis H., | Hagerstown, Md. | 125 |
| Murdock, Annie L., | Hagerstown, Md. | 49 |
| McKee, Eva | Hagerstown, Md. | 128 |
| Middlekauff, Sarah E., | Hagerstown, Md. | 15 |
| Hetzger, Cora E., | Hagerstown, Md. | 167 |
| Miller, William H., | Hagerstown, Md. | 20 |
| Miller, D. F., | York, Pa. | 20 |
| Newcomer, Wolfgang M., | Hagerstown, Md. | 175 |
| Newcomer, Peter, | Waynesboro, Pa. | 46 |
| Neill, Alex., | Hagerstown, Md. | 12 |
| Newcomer, Henry, | Benevola, Md. | 62 |
| Neikirk, Otho E., | Boonsboro, Md. | 6 |
| Norris, James | Boonsboro, Md. | 10 |
| Newcomer, Ardella M., | Beaver Creek, Md. | 68 |
| Neikirk, Elizabeth | Keedysville, Md. | 14 |
| Newcomer, John D., | Hagerstown, Md. | 10 |

| Residence. | No. Shares. |
|---|---|
| Newcomer, Harry, Hagerstown, Md. | 6 |
| Amount brought over | 6,139 |
| (383) | |
| Oswald, Lelia F., Hagerstown, Md. | 14 |
| Oswald, Edward, Hagerstown, Md. | 9 |
| Oswald, Richard A., Hagerstown, Md. | 5 |
| Orphans' Home (Wash. Co.) Hagerstown, Md. | 50 |
| Oswald, George B., Jr., Hagerstown, Md. | 5 |
| Oswald, Nora L., Hagerstown, Md. | 5 |
| Oswald, John D., Hagerstown, Md. | 5 |
| Potomac Lodge, Hagerstown, Md. | 202 |
| Pearson, George C., Smithsburg, Md. | 15 |
| Pearson, George C., (Exc. Geo. R. Bowman)) Smithsburg, Md | 10 |
| Resh, David, Hagerstown, Md. | 25 |
| Resh, Samuel Hagerstown, Md. | 24 |
| Reed, Fannie Clearspring, Md. | 90 |
| Ridenour, Elizabeth, Hagerstown, Md. | 25 |
| Rose, Miss Emma, Hagerstown, Md. | 55 |
| Rouskulp, Mary R., Hagerstown, Md. | 74 |
| Rouskulp, Rebecca, Hagerstown, Md. | 77 |
| Rouskulp, Emma L., Hagerstown, Md. | 74 |
| Rouskulp, Charles W., Hagerstown, Md. | 13 |
| Rouskulp, Harry W., Hagerstown, Md. | 13 |
| Rouskulp, Bessie, Hagerstown, Md. | 2 |
| Reamer, Julia E., Hagerstown, Md. | 128 |
| Rickard, Elizabeth M., Hagerstown, Md. | 20 |
| Ridenour, Will N., Hagerstown, Md. | 10 |
| Snively, Emma K., Keedysville, Md. | 2 |
| Storm, Louisa E., Boonsboro, Md. | 9 |
| Suter, Samuel A., Hagerstown, Md. | 130 |
| Shafer, Robert J., Boonsboro, Md. | 148 |
| Schindel, Annie L., Hagerstown, Md. | 20 |
| Smith, John L., Hagerstown, Md. | 30 |
| (384) | |
| Amount brought over | 7,428 |
| Spickler, Ida M., Clearspring, Md. | 28 |
| Spickler, David H. Clearspring, Md. | 10 |
| Spangler, Lillian O., Hagerstown, Md. | 10 |
| Snavely, Jno. H., Adm. H. S. Snavely, Downsville, Md | 27 |
| Sargis, Catherine C., Boonsboro, Md. | 3 |
| Snively, Jacob A., Hagerstown, Md. | 15 |
| Steffey, J. Grason, Williamsport, Md. | 172 |
| Snyder, James, Sharpsburg, Md. | 10 |
| Spangler, Florence A., Lancaster, Pa. | 20 |
| Thomas, Myrtle B., Keedysville, Md. | 50 |

| | Residence. | No. Shares. |
|---|---|---|
| Tice, Nannie B., | Hagerstown, Md. | 21 |
| Thomas, Jas. L., | Fairplay, Md. | 6 |
| Troup, Lida B., | Hagerstown, Md. | 28 |
| Troup, J. Earl, | Hagerstown, Md. | 23 |
| Troup, Rhoda Bell | Hagerstown, Md. | 23 |
| Troup, Jas. H., | Hagerstown, Md. | 150 |
| Tice, Clara V., | Hagerstown, Md. | 24 |
| Treas. Christ Reformed Church, (Cavetown) | Cavetown, Md. | 14 |
| Thomas, Charles, | Keedysville, Md. | 30 |
| Taylor, C. H., | Keedysville, Md. | 22 |
| Updegraff, Della I., | Hagerstown, Md. | 41 |
| Updegraff, Lizzie Viola | Hagerstown, Md. | 40 |
| Varden, Mollie B., | Mercersburg, Pa. | 5 |
| Vogel, Bonna G., | Smithsburg, Md. | 203 |
| Winter, Hattie B., | Smithsburg, Md. | 5 |
| Wagner, Annie M. (Mrs. Annie W. Myer) | Hagerstown, Md. | 10 |
| Wantz, Emma Jane | Hagerstown, Md. | 15 |
| Winter, Jacob P., | Caveton, Md. | 55 |
| Wallich, Ida May | Hagerstown, Md. | 53 |
| (385) | | |
| Amount brought over | | 8,541 |
| Windel, Margaret, | Clearspring, Md. | 12 |
| Waters, Arnold Elzey | Towson, Balto. Co., Md. | 25 |
| Wingert, Eliza J., | Hagerstown, Md., | 120 |
| Wyand, Grant | Keedysville, Md. | 40 |
| Wishard, Joseph A., | Leithersburg, Md. | 90 |
| Wingert, William | Hagerstown, Md. | 354 |
| Wingert, Martha A., | Hagerstown, Md. | 142 |
| Wingert, Miller, | Hagerstown, Md. | 151 |
| Wingert, Henry F., | Hagerstown, Md. | 120 |
| Wingert, Lewis P., | Hagerstown, Md. | 151 |
| Willson, Walter D., | Hagerstown, Md. | 10 |
| Yeakle, Annie R., | Hagerstown, Md. | 119 |
| Yeakle, Sallie M., | Hagerstown, Md. | 120 |
| Zeigler, Blanche Winger, | Greencastle, Pa. | 5 |
| Total Amount of Shares | | 10,000 |

## DEFENDANTS' EXHIBIT CONSENT OF STOCKHOLDERS TO IMPROVEMENTS.

(386) Filed June 14th, 1909.

We, the undersigned Stockholders of the First National Bank of Hagerstown, Maryland, do hereby express our confidence in the judgment and ability of the present Board of Directors of said Bank, and we hereby further desire to concur in the plans of said Directors to erect a modern Bank and Office Building upon the present lot owned by the First National Bank, and located on the North side of West Washington street, in Hagerstown, Maryland, which site the First National Bank has owned and occupied for more than fifty years.

SARAH HAGERHAN. 400.

1

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

(387) York, Pa., Mar. 25, 1909.

Whereas, The Board of Directors of the First National Bank of Hagerstown, Md., contemplate the tearing down of the present banking building occupied by the Bank, and the erection of a new modern six-story banking and office building on the site of the present Bank, I hereby certify that I approve of the contemplated improvements.

I further certify that I am the owner of 20 shares of stock of said Bank.

D. FRANK MILLER.

2

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

(388) Whereas, The Board of Directors of the First National Bank of Hagerstown, contemplate the tearing down of the present banking building occupied by the Bank, and the erection of a new modern six-story banking and office building on the site of the present Bank, I hereby certify that I approve of the contemplated improvements.

I further certify that I am the owner of 30 shares of stock of said Bank.

MARY I. BECKENBAUGH.

3

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

(389) Whereas, The First National Bank of Hagerstown purposes making improvements by the erection of a modern six-story building on the site of their present property, the said new building to be used for their banking purposes on first floor and remaining floors to be rented as offices.

Resolved, By Antietam Tribe #46 I. O. R. N. of Hagerstown that said tribe, being a stockholder, approves and does hereby express its approval and concurrence in said plans and purposes of the said First National Bank of Hagerstown in the erection of said new bank and office building.

And this certificate said *said* Antietam Tribe #46 is the owner of Sixteen shares of the Capital Stock of said First National Bank.

E. E. DYER,
Attest: {C. McP. SMITH, J. E. DOWNIN, Trustees.

C. McP. SMITH, *Sachem.*
FRANK M. WAVE,
Chief of Records.
[Seal]

4

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

(390)

We, the undersigned Stockholders of the First National Bank of Hagerstown, Maryland, do hereby express our confidence in the judgment and ability of the present Board of Directors of said Bank, and we hereby further desire to concur in the plans of said Directors to erect a modern Bank and Office Building upon the present lot owned by the First National Bank, and located on the North side of West Washington street,

in Hagerstown, Maryland, which site the First National Bank has owned and occupied for more than fifty years.

| | | | |
|---|---|---|---|
| SAMUEL B. HARTLE, | No. | 20 | *shears.* |
| ALFRED A. ANKENEY, | " | 153 | shares. |
| CHARLES McCAULEY, M. D., | " | 794 | shares. |
| Mrs. LILLIAN K. BRINING, Per E. S. B., | " | 150 | " |
| REBECCA ROUSKULP, | | 77 | " |
| J. D. NEWCOMER, | | 10 | " |

5

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

(391)

We, the undersigned Stockholders of the First National Bank of Hagerstown, Maryland, do hereby express our confidence in the judgment and ability of the present Board of Directors of said Bank, and we hereby further desire to concur in the plans of said Directors to erect a modern Bank and Office Building upon the present lot owned by the First National Bank, and located on the North side of West Washington street, in Hagerstown, Maryland, which site the First National Bank has owned and occupied for more than fifty years.

| | |
|---|---|
| JOHN G. BOWER, | One hundred and twenty-two shares. |
| FRANCIS H. MILLER, | One hundred and twenty-three shares. |
| JOSEPH S. McCARTNEY, | Thirty-seven shares. |
| ARDELLA M. NEWCOMER, | 68 shares. |

6

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

(392)

We, the undersigned Stockholders of the First National Bank of Hagerstown, Maryland, do hereby express our confidence in the judgment and ability of the present Board of Directors of said Bank, and we hereby further desire to concur in the plans of said Directors to erect a modern Bank and Office Building upon the present lot owned by the First National Bank, and located on the North side of West Washington street, in Hagerstown, Maryland, which site the First National Bank has owned and occupied for more than fifty years.

| | No. Shares. |
|---|---|
| H. W. BARKMAN, | 12 |
| GEO. W. GILBERT, | 69 |
| D. W. FOLTZ, | 51 |
| ROBERT J. SHAFER, | 140 |
| LOUISA E. STORM, | 9 |
| CATHARINE C. SARGES, | 3 |
| CHAS. THOMAS, | 30 |
| MYRTIE B. THOMAS, | 50 |
| W. D. COFFMAN, | 48 |
| GRANT WYAND, | 40 |
| ELLA COFFMAN, | 47 |
| Dr. A. D. BAKER, | 30 |
| C. B. TAYLOR, | 22 |
| DAVID E. BOWMAN, | 25 |
| CLARA E. BOWMAN, | 20 |
| HENRY NEWCOMER, | 62 |
| W. M. NEWCOMER, | 175 |
| Boonsboro, Md. | |
| CHAS. D. COFFMAN, | 106 |
| C. ESTELLE COFFMAN, | 107 |
| LAURA C. CHANEY, | 2 |

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

We, the undersigned Stockholders of the First National Bank of Hagerstown, Maryland, do hereby express our confidence in the judgment and ability of the present Board of Directors of said Bank, and we hereby further desire to concur in the plans of said Directors to erect a modern Bank and Office Building upon the present lot owned by the First National Bank, and located on the North side of West Washington street, in Hagerstown, Maryland, which site the First National Bank has owned and occupied for more than fifty years.
(393)

| | |
|---|---|
| NEWTON KLINE, | 33 Shares. |
| EMMA ROSE, | 55 Shares. |
| R. LEE HAINE, | 71 Shares. |
| ALEXANDER NEILL, | 12 Shares. |
| HARRY W. ROUSKULP, | 13 " |
| EMMA L. ROUSKULP, | 74 " |
| MARY R. ROUSKULP, | 74 " |
| SOPHIA B. C. BURKHART, | 200 " |
| PRUDENCE C. KAUSLER, per JOHN S. KAUSLER, Agt., | 217 " |
| POTOMAC LODGE No. 31, I. O. O. F., | 202 " |
| M. L. KEEDY, | 1 " |
| CITY SAVINGS BANK, E. E. HUTZELL, Cashier, | 50 |
| THOMAS H. HUTZELL, | 16 |
| DELLA I. UPDEGRAFF, | 41 |
| S. VIOLA UPDEGRAFF, | 40 |
| W. C. McKEE, | 33 |
| D. S. BOYER, | 201 |
| EDWARD OSWALD, | 30 |
| WILL H. RIDENOUR, | 10 |

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

| | | |
|---|---|---|
| JOSEPHINE A. HURLEY, | 111 | Shares. |
| GEO. B. OSWALD, Jr., | 5 | " |
| (394) | | |
| ELIZA J. KELLER, | 25 | Shares. |
| Mrs. J. O. BEARD, | 12 | " |
| ANNA L. MURDOCK, Pr. W. A. MURDOCK, Agt., | 49 | " |
| DAVID H. SPICKLER, | 10 | " |
| IDA M. SPICKLER, | 28 | " |
| KATHERINE ANKENEY, | 25 | " |
| LUCY V. BOYD, | 12 | " |
| Mrs. DAVID N. ANKENEY, | 49 | " |
| Mrs. MARY JANE BOVEY, | 60 | " |
| FANNIE REED, | 90 | " |
| MAGGIE WINDLE, G. D. FEIDT, Agt., | 12 | " |
| LUCINA KLINE, | 21 | " |
| JOSEPH H. TROUP, | 150 | " |
| J. STANLEY McKEE, | 140 | " |
| LIDA B. TROUP, RHODA B. TROUP, J. EARL TROUP, | 74 | " |
| JOHN D. OSWALD, | 5 | |
| NORA I. OSWALD, | 5 | |
| HARRY NEWCOMER, | 6 | |
| RICHARD A. OSWALD, | 5 | |
| LEILA F. OSWALD, | 14 | |
| OLIVIA M. McKEE, | 140 | |

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

(395)

| | | |
|---|---|---|
| MAGGIE S. APPLEMAN, | 16 | |
| B. S. BAKER, | 66 | Shares. |
| Mrs. SARAH E. MIDDLEKAUFF, | 25 | " |
| CORA METZGER, | 167 | Shares. |
| EVA McKEE, | 128 | " |
| S. FINDLAY ANKENEY, | 28 | " |
| WILLIAM J. HURLEY, | 129 | " |
| GILEAD ENCAMPMENT I. O. O. F. #6, | 145 | " |
| MARY E. BARR, | 60 | " |

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

(396)

We, the undersigned Stockholders of the First National Bank of Hagerstown, Maryland, do hereby express our confidence in the judgment and ability of the present Board of Directors of said Bank, and we hereby further desire to concur in the plans of said Directors to erect a modern Bank and Office Building upon the present lot owned by the First National Bank, and located on the North side of West Washington street, in Hagerstown, Maryland, which site the First National Bank has owned and occupied for more than fifty years.

| | |
|---|---|
| J. A. WISHARD, | 99 |
| BONNA G. VOGEL, | 203 |
| HATTIE B. WINTER, | 5 |
| ISAAC ANKENEY, JR., | 10 |
| F. W. MISH, | 323 |
| F. W. MISH, | 10 |
| C. A. LITTLE, | 25 |
| GEO. C. PEARSON, | 15 |
| GEO. C. PEARSON, Ex., | 10 |

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

(397)

We, the undersigned Stockholders of the First National Bank of Hagerstown, Maryland, do hereby express our confidence in the judgment and ability of the present Board of Directors of said Bank, and we hereby further desire to concur in the plans of said Directors to erect a modern Bank and Office Building upon the present lot owned by the First National Bank, and located on the North side of West Washington street, in Hagerstown, Maryland, which site the First National Bank has owned and occupied for more than fifty years.

| | |
|---|---|
| RUFUS S. CRIM,<br>J. H. SNAVELY,<br>A. B. X BOWER,<br>His Mark H. S. SNAVELY,<br>H. S. SNAVELY,<br>L. T. BEACHLEY, | Trustees of Downsville Christian Church. 70 shares. |

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

We, the undersigned Stockholders of the First National Bank of Hagerstown, Maryland, do hereby express our confidence in the judgment and ability of the present Board of Directors of said Bank, and we hereby further desire to concur in the plans of said Directors to erect a modern Bank and Office Building upon the present lot owned by the First National Bank, and located on the North side of West Washington street, in Hagerstown, Maryland, which site the First National Bank has owned and occupied for more than fifty years.

(398)

ROBT. B. FRENCH, 10

Whereas, The Board of Directors of the First National Bank of Hagerstown, contemplate the tearing down of the present banking building occupied by the Bank, and the erection of a new modern six-story banking and office building on the site of the present Bank, I hereby certify that I approve of the contemplated improvements.

I further certify that I am the owner of 20 shares of stock in said Bank.

Mrs. REBECCA KEMP,
Pr. GEO. M. KEMP.

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

(399)

We, the undersigned Stockholders of the First National Bank of Hagerstown, Maryland, do hereby express our confidence in the judgment and ability of the present Board of Directors of said Bank, and we hereby further desire to concur in the plans of said Directors to erect a modern Bank and Office Building upon the present lot owned by the First National Bank, and located on the North side of West Washington street, in Hagerstown, Maryland, which site the First National Bank has owned and occupied for more than fifty years.

Mrs. CORA E. HARTLE, 19 Shares.
W. D. WILLSON, 10 "

14

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

(400)

We, the undersigned Stockholders of the First National Bank of Hagerstown, Maryland, do hereby express our confidence in the judgment and ability of the present Board of Directors of said Bank, and we hereby further desire to concur in the plans of said Directors to erect a modern Bank and Office Building upon the present lot owned by the First National Bank, and located on the North side of West Washington street, in Hagerstown, Maryland, which site the First National Bank has owned and occupied for more than fifty years.

| | |
|---|---|
| C. D. DOWNS, | 4 Shares. |
| SARAH DOWNS, | 10 Shares. |
| J. GRASON STEFFEY, | 172 |

15

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

(401) Resolved by Gilead Encampment No. 6, I. O. O. F. of Hagerstown, Maryland, this 18th day of March, A. D., 1909.

Whereas, the Board of Directors of The First National Bank of Hagerstown, Maryland, proposes and deems it advisable to improve the property belonging to the Bank situated on the North side of West Washington street, in Hagerstown, Maryland, by the erection of a six story Bank and Office Building thereon,

Whereas, an injunction has been asked for in the United States Court by one of the Stockholders of said Bank to prevent the Board of Directors from carrying out and executing their intentions,

Whereas, we concur in the purposes and intentions of said Board of Directors,

That the said Gilead Encampment, No. 6, I. O. O. F., of Hagerstown, Maryland, hereby expresses its confidence in the said Board of Directors of the said First National Bank, and approves of the plan and desire of the said Board to erect upon the said property of the First National Bank a new and modern Bank Building with offices and all modern appliances.

HARRY D. BURGER, C. P.
J. WINJEN DRAPER, Treas.
WM. O. DIEHL, Rec. Scribe.

[Seal]

16

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

(402) Resolved by Potomac Lodge, No. 31, I. O. O. F. of Hagerstown, Maryland, this sixteenth day of March, A. D., 1909,

Whereas, the Board of Directors of The First National Bank of Hagerstown, Maryland, proposes and deems it advisable to improve the property belonging to the Bank situated on the North side of West Washington street, in Hagerstown, Maryland, by the erection of a six story Bank and Office Building thereon,

Whereas, an injunction has been asked for in the United States Court by one of the Stockholders of said Bank to prevent the Board of Directors from carrying out and executing their intentions,

Whereas, we concur in the purposes and intentions of said Board of Directors,

That the said Potomac Lodge, No. 31, I. O. O. F. of Hagerstown, Maryland, hereby expresses its confidence in the said Board of Directors of the said First National Bank, and approves of the plan and desire of the said Board to erect upon the said property of the First National Bank a new and modern Bank Building with offices and all modern appliances.

L. M. KERNEY, N. G.

HARRY D. BURGER, R. S.

[Seal]

17

Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

We, the undersigned, Stockholders of the First National Bank of Hagerstown, Maryland, do hereby express our confidence in the judgment and ability of the present Board of Directors of said Bank, and we hereby further desire to concur in the plans of said Directors to erect a modern Bank and Office Building upon the present lot owned by the First National Bank, and located on the North side of West Washington Street, in Hagerstown, Maryland, which site the First National Bank has owned and occupied for more than fifty years.

(403)

| | |
|---|---|
| C. M. HORST, | 19 Shares. |
| J. P. WINTER, | 55 Do. |
| GEO. M. ANKENEY, | 27 " |
| JACOB A. SNIVELY, | 15 " |

18

Exhibit Consent of

Stockholders to Improvements.

Filed June 10, 1909.

(404)

Whereas, The Board of Directors of the First National Bank of Hagerstown, contemplate the tearing down of the present banking building occupied by the Bank, and the erection of a new modern six-story banking and office building on the site of the present Bank, I hereby certify that I approve of the contemplated improvements.

I further certify that I am the owner of 25 shares of stock of said Bank.

CLYDE B. FURST.

19

Exhibit Consent of

Stockholders to Improvements.

Filed June 10, 1909.

(405)

Whereas, The Board of Directors of the First National Bank of Hagerstown, contemplate the tearing down of the present banking building occupied by the Bank, and the erection of a new modern six-story banking and office building on the site of the present Bank, I hereby certify that I approve of the contemplated improvements.

I further certify that I am the owner of 37 shares of stock of said Bank.

CLYDE B. FURST,
Executor Catharine B. Bowman, dec'd.

20
Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

(406) Whereas, The Board of Directors of the First National Bank of Hagerstown, contemplate the tearing down of the present banking building occupied by the Bank, and the erection of a new modern six-story banking and office building on the site of the present Bank, I hereby certify that I approve of the contemplated improvements.

I further certify that I am the owner of 11 shares of stock of said Bank.

MARGARET GREENAWALT.

21
Exhibit Consent of
Stockholders to Improvements.
Filed June 10, 1909.

## DEFENDANTS' EXCEPTIONS TO TESTIMONY AND DEPOSITIONS OF COMPLAINANT.

(407) Filed June 16, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT, IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, Frank W. Mish, et al. } No. 74 Eq. F.

To The Honorable, The Judges of Said Court:

The Defendants in the above entitled cause, came into Court here by Charles A. Little and George R. Gaither, their Solicitors, and object and except to the testimony and depositions taken on behalf of the Plaintiff in the above entitled cause, as follows, to all of which testimony and depositions, objections were noted at the time of the taking of the same before Alex-

ander R. Hagner, Commissioner, who took said testimony, and respectfully ask that the same may be stricken from the record, and not taken into consideration in this cause:

All the testimony of Lewis P. Wingert on Pages 4 and 5 of Book 1, of said testimony, for the reason that the said testimony is irrelevant. And to the question on Page 9 of said Book 1, for the reason that the same does not pertain to the issues in this cause.

To all the questions on Page 10 of said Book 1, for the reason that the same are irrelevant, and do not pertain to the issues in this cause.

To all the question to which objections were noted on Pages 11 12, and 13 of the testimony of the said Lewis P. Wingert, for the reason that the same are irrelevant, and do not pertain to the issues in this cause.

To the following testimony of William Wingert offered (408) in behalf of the Plaintiff, namely, all of the answer to the question on Pages 15 and 16 of Book 1, except such parts thereof as may be necessary for the purpose of identifying said witness; and to all the testimony on Pages 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32, to which objections have been noted, for the reason that all of said testimony is irrelevant, and has no relation whatever to the questions at issue in this cause.

To all the testimony of Rufus Hays on Pages 37 and 38 of Book 1, to which objections were filed at the time of the taking thereof, for the reason that the said testimony is irrelevant, and has no relation to the issues in this cause.

To all the testimony of Owen D. Sherley on Pages 40 and 41 of Book 1, to which exceptions were noted at the time of the taking thereof, for the reason that *that* the same is irrelevant and has no relation to the questions at issue in this cause.

To all the testimony of Sylvester Young, to which objections were noted at the time of the taking thereof, on Pages 42 to 46, inclusive, for the reason that the same is irrelevant, and has no relation whatever to the issues in this cause.

To all the testimony of S. M. Bloom, a witness for the Plaintiff, to which objections were noted at the time of the taking thereof, on Page 2 of Book 2 of said testimony and depositions, for the reason that the same is irrelevant, and does not pertain to the issues in this cause.

To the testimony of Joseph Kausler, a witness produced on behalf of the Plaintiff as follows: To the 1st question on Page 5 of Book 2 of said testimony, to which objection was noted at the time of the taking thereof, for the reason that the same is leading, and to all the other questions to which objections were noted at the time of the taking thereof, on Pages

5, 6 and 7, for the reason that the same is irrelevant, and also to Exhibits 1 and 2.

(409) To all the testimony of Andrew J. Schindel on Pages 7, 8, 9 and 11 of said Book 2, to which objections were noted at the time of the taking thereof, for the reason that the same is irrelevant and has no reference whatever to the issues in this cause.

To all the testimony of William H. Tice, a witness produced in behalf of the Plaintiff, to which objection was noted at the time of the taking thereof, on Pages 12, 13 and 14 of Book 2, for the reason that the same is irrelevant, and is in no way related to the issues in this cause.

To the testimony of Joseph Kausler recalled, to which objection was made at the time of the taking thereof, on Page 14 of said Book 2, for the reason that the same is irrelevant, and does not pertain to the issues in this cause.

To the testimony in chief of Clegget D. Spangler, to which objections were noted at the time of the taking thereof, on Pages 17 and 18 of said Book 2, for the reason that the same is irrelevant.

To the testimony in chief of Milton Kohler, to which objections were noted at the time of the taking thereof, on Pages 19 and 20 of Book 2, for the reason that the same is irrelevant, and does not pertain to the issues in this cause.

To all the testimony in chief of W. L. Middlekauff on Pages 21 and 22 of said Book 2, to which objections were noted at the time of the taking thereof, for the reason that the same is irrelevant.

To the testimony of George B. McWolf on Pages 23 and 24 of said Book 2, to which objections were noted at the time of the taking thereof, for the reason that the same is irrelevant.

To the testimony of John B. Kieffer, a witness for the Plaintiff to which objection is noted on Page 24 of said Book 2, for the reason that the same is irrelevant. Also to the paper marked Exhibit 3, the same being a statement of the Hagerstown Bank, referred to on Page 25 of said testimony in (410) said Book 2, and also to all the other testimony objected to on Page 25, for the reason that the same is irrelevant, and has no reference to the issues in this cause.

To the testimony of James E. S. Pryor, objected to on Page 26 of said Book 2, for the reason that the same is irrelevant.

To the testimony of Earl Troup, a witness of the Plaintiff, objected to on Pages 29 and 30 of said Book 2, for the reason that the same is irrelevant.

And the said Defendants hereby further object to the following testimony and depositions taken in cross examination of the Defendants' witnesses by the Plaintiff as follows:

To the testimony of Harvey H. Heyser on cross examination, on Page 5 of Book 3 of said Testimony, to which objection was noted at the time for the reason that the same is irrelevant.

To all the testimony of Frank W. Mish on cross examination, to which objection was noted at the time on Pages 18, 19, 20, 24, 25, and 26 of said Book 3, for the reason that the same is irrelevant.

And the Defendants object to the offering of the advertisement referred to at the bottom of page 26 of said Book 3, and the top of Page 27 of said Book 3, for the reason that the same is irrelevant and throws no light upon the questions at issue.

And to the question following the introduction of the said advertisement on Page 27 of said Book 3, for the reason that the same is irrelevant and throws no light upon the questions at issue.

And they further object to the testimony of Frank W. Mish on cross examination on Pages 27 and 28 of said Book 3, and the top of Page 29 of said Book 3, for the reason that the same is irrelevant, and also for the reason that this testimony pertains to matters that have occurred since the bringing of this suit.

(411) They object and except to the other questions on Pages 29, 30, 31, 32, and 33 of said Book 3 of the cross examination of the said Frank W. Mish, for the reason that the same is irrelevant. They however, withdraw their objection to the last question on Page 33, to which exceptions were taken at the time.

The Defendants hereby withdraw their objections to the testimony of Harry W. Rouskulp, to which exception was noted on Page 6 of Book 4 of said testimony, but object and except to the testimony of Harry W. Rouskulp given on cross examination, and objected to on Page 7 of said Book 4, for the reason that the same is irrelevant, and throws no light upon the questions at issue.

They except to the testimony of C. M. Horst brought out in cross examination of said witness, to which exceptions were noted on Pages 10, 11, 13 and 14, for the reason that the same is irrelevant, and for the reason that the same is not proper cross examination of the witness, but testimony that should have been offered in chief by the Plaintiff.

To the testimony given by Nervin J. Brandt, a witness for the Defendant, in cross examination, to which objections were noted on Pages 32, 33, 34, 35, 36 37 and 39 of said Book 4, for the reason that the same is irrelevant, and that the same is not proper cross examination, but examination in chief.

To the testimony of J. H. Snavely, a witness for the Defendant, on cross examination, to which objections were noted and taken on Pages 6 and 7 of Book 5 of said testimony, for the reason that the same is irrelevant, and in no way pertains to the issued in this cause.

To the testimony of Rufus Crimm on cross examination, to which exceptions and objections were taken and noted on Pages 9, 10, and 11 of Book 5 of said testimony, for the reason that the same is irrelevant, and in no way pertains to (412) the issues in this cause.

To the testimony on cross examination of H. S. Snavely, to which objections were noted on Pages 14 and 15 of said Book 5, for the reason that the same is not relevant to the issues in this cause.

To the testimony on cross examination of Landon Kerney, to which objections are noted on Pages 20 and 21 of said Book 5, for the reason that the same is irrelevant, and is in no way pertinent to the issues in this cause.

To the testimony on cross and recross examination of Harry D. Burger, to which objections are noted on Pages 23 and 25 of said Book 5, for the reason that the same is irrelevant.

To the testimony on cross examination of W. O. Diehl, to which objections are noted on Pages 28 and 29 of said Book 5, for the reason that the same is irrelevant, and does not pertain to the issues in this cause.

To the testimony on cross examination of J. W. Draper, to which objections were noted on Pages 31 and 32 of said Book 5, for the reason that the same is irrelevant to the issues in this cause.

To the testimony on cross examination of C. McP. Smith, to which exceptions are noted on Pages 35 and 36 of said Book 5, for the reason that the same is irrevevant to the issues in this cause.

To the testimony on cross examination of Frank M. Wroe, to which exceptions are noted on Pages 37 and 38 of said Book 5, for the reason that the same is not relevant to the issues in this cause.

To the testimony on cross examination of Earl Troup, to which exceptions are noted on Pages 44 and 45 of said Book 5, for the reason that the same are in no way relevant to the issues in this cause.

To the testimony of George F. Burkhart given on cross examination, to which exceptions are noted on Pages 48, 49, 50 and 51 of said Book 5, for the reason that the same are not relevant to the issues in this cause.

(413) To the testimony of Wolfgang M. Newcomer given on cross examination, to which objections are noted on Pages

53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 and 64 of said Book 5, for the reason that the same is irrelevant.

To the testimony of said Wolfgang M. Newcomer, to which the first objection on Page 65 pertains, for the reason that the same is heresay, and to the *further testimony* of said Wolfgang M. Newcomer, to which objections are noted on Page 65, for the reason that the same is irrelevant and has no relation to the issues in this cause.

To the testimony given by Daniel W. Doub, on cross examination to which exceptions are noted on Pages 72, 73, 74, 75, 76, and 77 of said Book 5, for the reason that the same is irrelevant to the issues in this cause.

To the testimony of J. O. Snyder, given on cross examination to which objections are noted on Pages 82, 83, 84, 85, 86 and 87 of said Book 5, for the reason that the same is irrelevant, and has no bearing on the questions at issue in this cause.

To the testimony of Louis Rose given on cross examination to which objections are noted on Pages 94, 95, 96 of said Book 5, for the reason that the same is irrelevant and has no bearing on the questions at issue in this cause.

To the testimony of Dr. Charles McCauley given on cross examination, to which objections were noted on Pages 107, 108, 109, 110, and 111 of said Book 5, for the reason that the same is irrelevant to the issues in this cause.

To the testimony of Samuel Emmert given on cross examination to which objections are noted on Pages 118, 119 and 120 of said Book 5, for the reason that the same is irrelevant and has no bearing on the questions at issue in this cause.

(414) To the testimony of J. Grason Steffey given on cross examination, to which objections are noted on Pages 126, 127, 128 and 129 of said Book 5, for the reason that the same is irrelevant and has no bearing upon the questions at issue in this cause.

To the testimony of Walter D. Willson given on cross examination to which objections are noted on Pages 135 and 136 and 137 of said Book 5, for the reason that the same is not relevant to the issues in this cause.

And to the testimony of Francis H. Miller on cross examination to which objections are noted on Pages 142, 143, 144, 145, 146 and 147 of said Book 5, for the reason that the same is not relevant to the issues in this cause.

And for other good and sufficient reasons to be given at the hearing and determination of the aforegoing exceptions.

The Defendants therefore allege that the testimony to which these exceptions and objections are hereby made ought not to be considered in the determination of the issues raised

by the pleadings in this cause, and that the same ought to be stricken from the record.

And as in duty, etc., etc.

C. A. LITTLE,
GEORGE R. GAITHER,
Solicitors for the Defendants.

**AGREEMENT OF COUNSEL THAT PLAT MARKED EXHIBIT No. 4 FILED BY COMPLAINANT SHALL BE ADMITTED AS TESTIMONY.**

(415) Filed June 16th, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al. } In Equity.

Whereas, at the close of the Complainant's testimony in the above entitled cause, April 19th, 1909, reference therein is made to the filing of a plat by the Complainant, showing the Public Square, North Potomac Street to Franklin Street, South Potomac Street to Antietam Street, West Washington Street to Jonathan Street, both sides of the Street, which was to be marked Exhibit No. 4,

And Whereas, said plat was filed on the 4th day of May, 1909, with Alexander R. Hagner, United States Commissioner, as part of the testimony in the above entitled cause on behalf of the Complainant,

And Whereas, it appears from the testimony of the Complainant that no note was taken of the filing of the said plat, the same having been returned with the Complainant's testimony as part thereof, it is hereby agreed by and between the counsel for the respective parties hereto, that the said plat marked Exhibit No. 4 showing the business section of Hagerstown, as aforesaid, shall be and is hereby admitted by both parties as evidence in this cause to the same effect as if a note of the filing thereof had been made at the time, as a part of the Complainant's testimony.

HENRY F. WINGERT,
MILLER WINGERT,
ALEX. NEILL, JR.,
Complainant's Counsel.
C. A. LITTLE,
Counsel for Defendants.

## PETITION OF COMPLAINANT TO HAVE CAUSE SET FOR FINAL HEARING AND ORDER OF COURT THEREON.

(416) Filed June 25th, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, et al. } No. 74 Eq. F.

To The Honorable, The Judge of Said Court:

Lewis P. Wingert, the Complainant in the above entitled cause, respectfully shows to your Honor that the said case being at issue and the testimony of both the Complainant and the Defendants having been completed and returned to this Court and filed herein, this cause is ready for a final hearing by your Honor.

Wherefore, your Complainant prays your Honor to set the same for hearing at the earliest date that may be convenient to your Honor consonant with the other business of your Court.

LEWIS P. WINGERT.

H. F. WINGERT,
MILLER WINGERT,
R. H. BAYARD,
ALEX. NEILL, JR.
Solicitors.

Counsel for the respective parties having agreed to submit the above entitled case for final determination upon briefs, it is Ordered this 25th day of June, 1909, by the Circuit Court of the United States in and for the District of Maryland, that the above entitled cause be heard upon briefs to be submitted by the respective parties and filed with the Clerk of said Court not later than the 6th day of July, 1909, provided a copy of this Order be mailed forthwith to the Complainant and the Defendants, or to their respective Solicitors.

THOS. J. MORRIS, Judge.

## PLAINTIFF'S EXCEPTIONS TO DEFENDANTS TESTIMONY.

(417) Filed July 6th, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
First National Bank of Hagerstown and others. } In Equity.

To the Honorable the Judges of said Court:

The plaintiff in the above entitled cause, Lewis P. Wingert, by his solicitors Henry F. Wingert, Miller Wingert, Mitchell Byard and Alex. Neill, Jr., now comes into Court and object and except to the testimony and depositions taken on behalf of the plaintiff in the above entitled cause as follows; to all of which depositions and testimony objections were entered at the time of the taking of the same before Alexander R. Hagner, Commissioner, who took said testimony, and he respectfully asks that the same may be stricken from the record and not taken into consideration in this cause:

To Questions Nos. 3 and 5 on page 3 of Book No. 1, asked Edward Oswald on cross examination, as the same are immaterial and irrelevant.

To Question 6 on page 33 of Book No. 1, asked William Wingert on cross examination, as the same is irrelevant and immaterial; and also to Question 6 on page 34 of Book No. 1 asked William Wingert on cross examination, as the same is immaterial and irrelevant; and also to Question No. 4 on page 35 of Book No. 1, because the same is immaterial and irrelevant.

To Question No. 4 on page 20 of Book No. 2, asked Milton Kohler on cross examination, as the same is immaterial and irrelevant.

(418) To Question No. 1 on page 30 of Book No. 2, asked S. M. Bloom on cross examination, as the same is immaterial and irrelevant and is the opinion of a witness who did not properly qualify as such witness to give such opinion.

To Question 7 on page 2 of Book No. 3, asked Harvey Heyser, on the ground that the same is irrelevant and immaterial and upon the further ground that the paper speaks for itself.

To Question 4 on page 6 of Book No. 3, asked Frank W. Mish, on the ground that the same is irrelevant and immaterial; and also to Question 4 on page 7, asked Frank W. Mish because the same is irrelevant and immaterial, and upon the further ground that the plat speaks for itself; also to Question 5 on page 8 of Book No. 3, asked Frank W. Mish, on the ground that the same is irrelevant and immaterial; and also to Question No. 5 on page 11 of Book No. 3, asked Frank W. Mish because the same is irrelevant and immaterial and on the further ground that the record speaks for itself; also to Question 4 on page 12 of Book No. 3, asked Frank W. Mish, upon the ground that the same is irrelevant and immaterial and is not the best testimony that can be offered; also to Question Nos. 1 and 2 on page 13 of Book No. 3, asked Frank W. Mish, upon the ground that the same are irrelevant and immaterial; also to Question No. 3 on page 14 of Book No. 3 asked Frank W. Mish, on the ground that the same is irrelevant and immaterial; also to Question No. 4 on page 15 of Book No. 3, asked Frank W. Mish, on the ground that the same is immaterial and irrelevant and is merely a matter of opinion; also to Questions Nos. 1 and 3 on page 16 of Book No. 3, asked Frank W. Mish, on the ground that the same are irrelevant and immaterial and matter of opinion of the witness; also to Question No. 1 on page 17 of Book No. 3 asked Frank W. Mish, on the ground that the answer embraces matters that are irrelevant and immaterial and also (419) hearsay, and it is the opinion of a witness who has not properly qualified to give his opinion; also on page 17 of Book No. 3, in the testimony of Frank W. Mish, the plaintiff moves to strike out the testimony given by the said Frank W. Mish on his own motion, as the same is immaterial, in response to no question, is irrelevant, contains hearsay matter and contains matter of action on the part of the Board of Directors which is not shown by the Minute Book and contains the opinion of a witness who has not properly qualified to give said opinion. And the Court is further asked to strike out all the testimony of the witness Frank W. Mish, because of repeated conversations between the witness and counsel for the Bank and between Dr. McCauley and the witness, which conversations were not made part of the record, were not heard by the Commissioner, and part of which were inaudible to counsel for the plaintiff.

To Question No. 9 on page 24 of Book No. 4, asked Harry W. Rouskulp, on the ground that the same is immaterial and irrelevant and the witness was not properly qualified to give his opinion as to whose signature it was; also to Questions Nos. 5 & 9 on page 3 of Book No. 4, asked Harry W.

Rouskulp, on the ground that the same are irrelevant and immaterial and that the witness was not properly qualified to give his opinion as to said signatures; also to Question No. 2 on page 4 of Book No. 4, asked Harry Rouskulp, upon the ground that the same is immaterial and irrelevant and leading and the witness is not properly qualified to give his opinion as to said signature; also to Questions Nos. 1 and 3 on page 5 of Book No. 4, asked Harry W. Rouskulp, because the same are immaterial and irrelevant and the witness is not properly qualified to give his opinion as to said signatures; also to Question No. 4 on page 7 of Book No. 4, asked Harry W. Rouskulp on re-examination, as the same is immaterial, (420) irrelevant and leading.

To Question No. 5 on page 8 of Book No. 4, asked C. M. Horst, because the same is immaterial and irrelevant and the paper is the best evidence and speaks for itself; also to Question No. 10 on page 9 of Book No. 4, asked C. M. Horst, because the same is immaterial and irrelevant; also to Question No. 1 on page 10 of Book No. 4, asked C. M. Horst, on the ground that the same is immaterial and irrelevant.

To Question No. 2 on page 15 of Book No. 4, asked Nervin J. Brandt, because the same is irrelevant and immaterial; also to Question No. 2 on page 16 of Book No. 4, asked Nervin J. Brandt, because the same is immaterial and irrelevant and the witness was not properly qualified to give his opinion as to said signature; also to Questions Nos. 4 and 8 on page 17 of Book No. 4, asked Nervin J. Brant, because the same are immaterial and irrelevant and the witness was not properly qualified to give his opinion as to said signatures; also to Question No. 3 on page 18 of Book No. 4, asked Nervin J. Brandt, because the same is immaterial and irrelevant and the witness is not properly qualified to give his opinion as to said signatures; and also to Questions Nos. 5 and 6 upon the same grounds; also to Questions Nos. 3 and 8 on page 19 of Book No. 4 on the ground that they are immaterial and irrelevant and the witness was not properly qualified to give his opinion as to said signatures; also to Questions Nos. 3, 4, 6 and 7 on page 20 of Book No. 4, asked Nervin J. Brandt upon the ground that the same are immaterial and irrelevant and the witness was not properly qualified to give his opinion as to said signatures; also to Questions Nos. 1, 5 and 8 on page 21 of Book No. 4, asked Nervin J. Brandt, because they are immaterial and irrelevant and the witness was not prop- (421) erly qualified to give his opinion as to said signatures; also to Questions Nos. 3, 5 and 9 on page 22 of Book No. 4, asked Nervin J. Brandt, because the same are irrelevant and immaterial and the witness was not properly qualified to give

his opinion as to said signatures; also to Questions Nos. 1, 4 and 8 on page 25 of Book No. 4, asked Nervin J. Brandt, because the same are irrelevant and immaterial and the witness was not properly qualified to give his opinion as to said signatures; also to Questions Nos. 2, 5 and 9 on page 24 of Book No. 4, asked Nervin J. Brandt, as the same are immaterial and irrelevant and the witness was not properly qualified to give his opinion as to said signatures; also to Questions Nos. 2, 6 and 10 on page 25 of Book No. 4, asked Nervin J. Brandt, because the same are irrelevant and immaterial and the witness was not properly qualified to give his opinion as to said signatures; also to Question No. 2 on page 26 of Book No. 4, asked Nervin J. Brandt, as the same is immaterial and irrelevant; also to Question No. 7 on page 31 of Book No. 4, asked Nervin J. Brandt, because the same is immaterial and irrelevant and it was not shown that Clyde B. Furst was executor and as such executor properly authorized to sign said paper.

And to Questions Nos. 6 and 7 on page 2 of Book No. 5, asked J. H. Snively, because the same are irrelevant and immaterial; also to Question Nos. 1, 7 and 8 on page 3 of Book No. 5, asked J. H. Snively, because the same are immaterial and irrelevant.

To Question No. 2 on page 9 of Book No. 5, asked Rufus Crim, because the same is leading and immaterial and irrelevant.

(422) To all the testimony on pages 15, 16 and 17 of Book No. 5, of L. T. Beachley, except the questions asked to identify said witness, upon the ground that the same is immaterial and irrelevant and made up entirely of hearsay evidence.

To the offering in evidence of a certified copy of the decree of the Circuit Court for Washington County appointing Charles McCauley and Daniel W. Doub Committee of the estate of Harry McCauley, as is shown on page 69 of Book No. 5 in the testimony of Daniel W. Doub, because the same is immaterial and irrelevant; also to the offering in evidence of a certified copy of the appointment of George C. Pearson as executor of Bowman, as is shown on page 69 of Book No. 5, as the same is immaterial and irrelevant; also to the offering in evidence of a certified copy of the appointment of Clyde B. Furst, executor of Bowman, as is shown on page 69 of Book No. 5, as the same is immaterial and irrelevant.

Also to the offering in evidence of paper marked "Exhibit Consent of Charles McCauley and Daniel W. Doub, Committee," as is shown on page 71 of Book No. 5, because the same is immaterial and irrelevant.

And to the offering in evidence of a bundle of papers marked "Consent of Stockholders to Improvements." Com-

posed of 21 pages fastened together and marked "Exhibit Consent of Stockholders to Improvements," as is shown on page 71 of Book No. 5, on the ground that the same is immaterial and irrelevant and throws no light upon the issues involved in this cause.

To Questions Nos. 3, 4, 5 and 6 on page 79 of Book No. 5, asked J. O. Snyder, because the same are immaterial and irrelevant, and special exceptions are made to Questions Nos. 5 and 6, on the ground of their being composed of hearsay evidence; also to Question No. 2 on page 80 of Book No. 5, asked J. O. Snyder, as the same is irrelevant and immaterial (423) and is a matter of opinion of a witness who has not properly qualified to give such opinion; also to Questions Nos. 4 and 5 on page 81 of Book No. 5, asked J. O. Snyder on the ground that the same are immaterial and irrelevant and are matters of opinion of a witness who has not properly qualified to give such opinion; also to Questions 3 and 4 on page 82 of Book No. 5, asked J. O. Snyder, because the same are immaterial and irrelevant.

To Question No. 7 on page 90 of Book No. 5, asked Louis Rose, on the ground that the same is irrelevant and immaterial; also to Questions Nos. 3 and 4 on page 91 of Book No. 5, asked Louis Rose, because the same are immaterial and irrelevant and are mere matters of opinion of a witness who has not properly qualified to give such opinion; also to Questions 1 and 2 on page 92 of Book No. 5, asked Louis Rose, because the same are irrelevant and immaterial and are matters of opinion of a witness who has not properly qualified to give such opinion; also to Question 3 on page 93 of Book No. 5, asked Louis Rose, because the same is immaterial and irrelevant and the opinion of a witness who is not properly qualified to give such opinion.

To Questions 6, 7 and 8 on page 99 of Book No. 5, asked Charles McCauley, because the same are irrelevant and immaterial; also to Questions Nos. 1, 6 and 8 on page 100 of Book No. 5, asked Charles McCauley, because the same are irrelevant and immaterial and are matters of opinion of a witness who is not properly qualified to give such opinion; also to Question No. 2 on page 103 of Book No. 5, asked Charles McCauley, because the same is immaterial and irrelevant and is not the best evidence that can be offered.

(424) To Question No. 7 on page 113 of Book No. 5, asked Samuel Emmert, because the same is leading, immaterial and irrelevant; and also to Question No. 9 on page 114 of Book No. 5, asked Samuel Emmert, because the same is immaterial and irrelevant; also to Questions Nos. 1, 3, 4 and 5 on page 115 of Book No. 5, asked Samuel Emmert, because the same

are irrelevant and immaterial, and questions Nos. 1 and 3 are matters of opinion of a witness who has not properly qualified to give such opinion; also to Questions Nos. 1, 2 and 3 on page 116 of Book No. 5, asked Samuel Emmert, because the same are irrelevant and immaterial and the mere opinion of a witness who is not properly qualified to give such opinion; also to Questions Nos. 2, 3 and 4 on page 117 of Book No. 5, asked Samuel Emmert, because the same are immaterial and irrelevant and the opinion of a witness who has not properly qualified to give such opinion.

To Questions Nos. 5, 6 and 7, on page 122 of Book No. 5, asked J. Grason Steffey, on the ground that the same are immaterial and irrelevant, and Question No. 7 on said page contains the opinion of a witness who is not properly qualified to give such opinion; also to Questions Nos. 1, 2 and 3 on page 123 of Book No. 5, asked J. Grason Steffey, as the same are immaterial and irrelevant and contain matters of opinion of a witness who is not qualified to give such opinion; also to Question No. 6 on page 124 of Book No. 5, asked J. Grason Steffey, because the same is immaterial and irrelevant and is not the best evidence that can be produced; also to Questions Nos. 2, 3, 7 and 8 on page 125 of Book No. 5, asked J. Grason Steffey, because the same are immaterial and irrelevant; also to Questions Nos. 1, 4 and 5 on page 126 of Book No. 5, asked J. Grason Seffey, because Question No. 1 is leading, immaterial and irrelevant and Questions Nos. 4 and 5 are (425) immaterial and irrelevant.

To Question No. 7 on page 131 of Book No. 5, asked Walter D. Willson, because the same is irrelevant and not the best evidence that can be offered; also to Questions Nos. 1, 2, 3 and 4 on page 132 of Book No. 5, asked Walter D. Willson, because the same are immaterial and irrelevant, question No. 2 is leading and questions Nos. 3 and 4 contain matters of opinion of a witness who is not properly qualified to give such opinion; also to Questions Nos. 6, 7 and 8 on page 133 of Book No. 5, asked Walter D. Willson, on the ground that the same are immaterial and irrelevant; also to Question Nos. 1, 2 and 3 on page 134 of Book No. 5, asked Walter D. Willson, because the same are immaterial and irrelevant and are not the best evidence that can be offered.

To Questions Nos. 4, 9 and 10 on page 139 of Book No. 5, asked Francis H. Miller, because the same are irrelevant and immaterial; also to Questions Nos 7 and 8 on page 140 of Book No. 5, asked Francis H. Miller, because the same are immaterial and irrelevant and the opinion of a witness not qualified to express such opinion; also to Questions Nos. 2, 5, 7 and 8 on page 141 of Book No. 5, asked Francis H. Miller,

because the same are irrelevant and immaterial and Question No. 2 is the opinion of a witness not properly qualified to give such opinion; also to Questions Nos. 3 and 4 on page 148 of Book No. 5, asked Francis H. Miller on re-examination, because the same are leading, immaterial and irrelevant.

And for other good and sufficient reasons to be given at the hearing and determination of the aforegoing exceptions.

The plaintiff, therefore, alleges that the testimony to which these exceptions and objections are hereby made ought not to (426) be considered in the determination of the issues raised by the pleadings in this cause and the same ought to be stricken from the records.

And as in duty, etc.,

H. F. WINGERT,
MILLER WINGERT,
R. H. BAYARD,
ALEX. NEILL, JR.,
Solicitors for the Plaintiff.

## OPINION.

(427) Filed August 20th, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, and others. } In Equity.

*Final hearing.*

Morris, District Judge.

This is a Bill for an injunction filed by Lewis P. Wingert on his own behalf (and on behalf of such other stockholders of the First National Bank of Hagerstown, Maryland, as should elect to become parties complainant) against the Bank and against its Directors.

The Bill alleges that the First National Bank of Hagerstown, Maryland is a National Bank organized and incorporated under the Act of Congress authorizing the organization of National Banks.

That it has a capital stock of $100,000 divided into 10,000 shares of $10 each.

That the complainant Lewis P. Wingert is the owner of 151 shares of the par value of $1,510.

That the Bank owns a lot of ground in Hagerstown which is improved by a banking house in which it is now doing business, and which the bill alleges is sufficient for the Bank's uses and of which the second and third floors are rented out to tenants.

That the directors of said Bank are about to tear down the present building and erect in its place at a cost of $60,000 a six story building of which the first story is designed for the
(428) use of the Bank and the remaining five stories are designed to be rented out for offices and places of business.

That the contemplated action of said National Banking Corporation is ultra vires and prohibited by the provisions of the National Banking Act. That a diversion of so large a portion of the funds of the bank from its legitimate business is not consonant with proper banking methods and that the complainant has addressed to the President and Directors a formal written protest calling upon them to desist from said illegal action.

That notwithstanding said protest the said directors are about to cause the present banking house to be torn down and intend thereafter to erect on said lot the six story bank and office building aforesaid. The bill then charges that by the restrictions of the act of congress governing National Banks the corporation can lawfully hold only such real estate "as shall be necessary for its immediate accommodation in the transaction of its business" and that the action aforesaid of said Directors is not only unwise as a business proposition and a diversion of the Bank's fund from legitimate uses, but is contrary to the act of Congress, that the Bank cannot lawfully enter upon a real estate business such as the construction of a large and expensive office building to be rented out for general purposes. The bill prays an injunction restraining the Bank from erecting on the site of the present bank building or any other lot belonging to or acquired by the Bank a six story building and from tearing down the present bank building for the purpose of erecting in its stead such six story office building and from changing the present bank building more than shall be necessary for its immediate accommodation in the transaction of its business.

The Bank and all of the directors (except William Win-
(429) gert) answered the Bill alleging that the lot owned by the Bank is in the center of the business part of Hagerstown surrounded by the principal commercial and public buildings of the city and is in a location peculiarly adapted for an office building such as is contemplated. That the present building

has been used for about thirty years and during that time but little money has been spent on it in repairs or improvements and that it is in such condition that considerable money must be spent on it to make it suitable and convenient for properly conducting the business of the Bank therein.

That the Bank has over and above its capital a surplus of $100,000 and about $32,000 of undivided earnings and is in a most flourishing condition doing a large business and having a very large amount of deposits. That the lot of ground alone is worth from $35,000 to $40,000 although carried at a valuation of only $10,000.

That the proposed expenditure will be taken out of the undivided profits and will not diminish the surplus of the Bank and will be a safe and productive investment of its funds. That there is a demand in Hagerstown for such an office building and a number of persons have already applied for offices in it and that the rents to be obtained will reduce the cost of the Bank's own quarters to a very small sum.

That at a special meeting of the Directors at which all the respondents (except Heyser the Bank's Cashier) and including William Wingert were present, all the directors voted in favor of the proposed improvement except William Wingert, a brother of the complainant, who alone opposed the contemplated improvements.

That the said proposed action was also submitted to the (430) individual stockholders of whom about 75% endorsed the action of the Directors.

It is to be noticed that this is not the case of a National Bank about to purchase real estate for the purpose of erecting thereon a six story office building as a business enterprise.

In the present case the lot of ground has belonged to the Bank since its organization having previously belonged to the Hagerstown Savings Bank to all of whose assets the Bank succeeded.

It is therefore simply a question whether or not the Bank which is and has been for many years the rightful owner of a lot of ground improved by its bank building can alter and enlarge the improvement on it so as to furnish better accommodation for the business of the bank and at the same time provide offices which can be rented to tenants.

There is no charge in the bill and no statement in the testimony challenging the good faith of the Directors. All except William Wingert appear in the honest exercise of their best judgment to be of opinion that the proposed expenditure of the Bank's funds is wise and beneficial and for the best interest of the Bank.

Who then is to determine the wisdom or the unwisdom of such an expenditure? Is the minority stockholder or the sin-

gle director who out of twelve directors opposes it, or the Judge of the Court, or is it the Board of Directors to whom the management of the affairs of the Bank has been committed by the stockholders who own it.

There can be but one answer to this question.

In an extreme case of a wasteful, unjustifiable expenditure of the funds of a corporation by its directors so great as not to be consistent with good faith the Court will interfere but this case is altogether wanting in any such fact.

The amount that may be reasonably expended on a Bank (431) building is a question into which enter a great many considerations properly to be determined by the men selected to manage the Bank's affairs.

In this case there appears nothing which would justify the Court in condemning the action of the Directors on the ground of its manifest unwisdom.

The other ground urged by the complainant is that the proposed action is violative of the restriction which permits a National Bank to hold only such real estate as shall be necessary for its immediate accommodation in the transaction of its business, and that therefore the erection of a building which will contain offices not necessary for the business of the Bank is not permitted by the law, although that method of improving the lot may be the most beneficial use that can be made of it. It is matter of common knowledge that the actual practice of National Banks is to the contrary.

Where ground is valuable it may probably be truly said that the majority of National Bank Buildings are built with accommodations in excess of the needs of the Bank for the purpose of lessening the Bank's expense by renting out the unused portion.

If that were not allowable many smaller banks in cities would be driven to become tenants as the great cost of the lot would be prohibitive of using it exclusively for the banking accommodation of a single Bank. As indicative of the interpretation of the law commonly received and acted upon reference may be made to the reply of the comptroller of the currency to the enquiry by the Bank in this case asking whether the law forbids the Bank constructing such a building as was contemplated.

The reply was as follows:

"Your letter of the 9th instant received, stating that the directors contemplate making improvements in the Bank building and inquiring if there is anything in the national banking laws prohibiting the construction of a building which will (432) contain floors for offices to be rented out by the bank as well as the banking room.

Your attention is called to the case of Brown & Schleir 118 Fed. Rep. 981 in which the Court held that—"If the land which a national bank purchases or leases for the accommodation of its business is very valuable it may exercise the same rights that belong to other landowners of improving it in a way that will yield the largest income, lessen its own rent, and render that part if its funds which are invested in realty most productive."

This seems to be the common sense interpretation of the Act of Congress and is the one which prevails.

The testimony tends to support the contention of the defendants that the Bank's lot of ground has increased greatly in value with the increasing business of the City and is capable of a more profitable use than with its present improvements; and that the Bank has a large surplus which can be more profitably employed by the contemplated use of it than it is at present. It is to be noticed that no one of the stockholders has joined with Lewis P. Wingert in this suit and become a party complainant although it seems probable that the Wingert family who together own about one-tenth of the total capital stock do side with the complainant in this controversy.

There are some technical points which the complainant has pressed in argument.

First that the filing of the answer of the Bank was not authorized at a properly called meeting of the Directors.

It appears that at a regularly called meeting held April 13, 1909, it was voted to tear down the present building and erect on the site a new six story building in conformity with the plans theretofore adopted. At that meeting all the direc- (433) tors voted in the affirmative except William Wingert who voted in the negative.

Afterwards when this bill was filed by Lewis P. Wingert against the Bank and all its directors the answer of the Bank and of all the Directors, except William Wingert, was prepared by counsel and a meeting of the Directors was called at which the answer of the Bank was read and approved nd the answer of the individual defendant directors except William Wingert was signed by each one of them.

The objection urged is that William Wingert one of the directors was not notified of this meeting and that therefore the answer filed by the Bank ought not to be received because not adopted by a legally called meeting of the Directors.

The matter of the proposed improvement had been fully canvassed at previous directors meetings and had been determined upon at a meeting at which the director William Wingert was present and at which his was the only dissenting vote

and the bank had proceeded with the proposed work. He had then made formal written protest and his brother had filed this bill of complaint making him one of the defendants.

The filing of the Bank's answer was a matter of course. The wording of the answer was in this case mere matter of detail. It was signed by the President of the Bank and sworn to by him. It was not a matter of such independent importance that it could not be filed until approved by a regularly called meeting of the Directors.

There are quite a number of exceptions to the admissibility of testimony mostly objections to questions and answers on cross examination. Although some of the testimony is objectionable as immaterial, in the view I have taken of the case it is not important whether the objections are sustained (434) or not. The result would be the same either way and I shall not prolong this opinion by considering them.

I will sign a decree denying the injunction and dismissing the bill.

## FINAL DECREE.

(435) Filed August 20th, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MARYLAND

Lewis P. Wingert
*vs.*
The First National Bank of Hagerstown, Maryland, and others.
} In Equity.

DECREE.

This cause coming on to be heard upon final hearing and being submitted and the bill and answers and the testimony being read and considered and the arguments and briefs submitted by counsel having been considered, it is by the Circuit Court of the United States for the District of Maryland this 20th day of August, 1909, for the reasons set forth in an opinion filed, adjudged, ordered and decreed that the injunction prayed for be refused and the bill of complaint be and the same is hereby dismissed with costs to the defendants.

THOS. J. MORRIS, Judge.

## PRAYER FOR APPEAL, ASSIGNMENT OF ERRORS AND ORDER OF COURT ALLOWING APPEAL.

(436) Filed August 23rd, 1909.

CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

Lewis P. Wingert, Complainant,
*vs.*
First National Bank of Hagerstown, Maryland, et al., Defendants.
} In Equity. 74 Equity F.

The above named complainant, Lewis P. Wingert, conceiving himself aggrieved by the final decree made and entered on the 20th day of August, 1909, refusing the injunction prayed for, and dismissing his bill of complaint with costs to the defendants, doth hereby appeal from said decree to the Circuit Court of Appeals for the Fourth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fourth Circuit.

H. F. WINGERT,
MILLER WINGERT,
Solicitors for Complainant.

Dated August 21st, 1909.

(437) And now, to-wit, on the 23rd day of August, 1909, it is ordered that the foregoing claim to appeal be allowed as prayed for and the amount of the appeal bond is fixed at two hundred dollars.

THOS. J. MORRIS,
United States Judge.

CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

| | |
|---|---|
| Lewis P. Wingert, Complainant, *vs.* First National Bank of Hagerstown, Maryland, et al., Defendants. | In Equity. No. 74 Equity. |

And now comes the complainant, Lewis P. Wingert, and makes and files with his petition for appeal herein, an assignment of errors as follows:

The Honorable, the Circuit Court of the United States erred:

(a) In overruling the motion interposed by the complainant, Lewis P. Wingert, not to receive the answer of the defendant, to wit, the First National Bank of Hagerstown, Maryland.

(b) In dismissing the restraining order passed and filed in said cause March 10th, 1909.

(c) In refusing to extend and to grant to the complainant, Lewis P. Wingert, the relief prayed for in his bill of complaint.

(438) (d) In refusing to extend and to grant to the complainant, Lewis P. Wingert, the decree prayed for in his bill of complaint.

(e) In refusing to extend and to grant to the complainant, Lewis P. Wingert, the relief prayed for in his petition to preserve unimpaired the plaintiff's right of action.

(f) In dismissing said bill of complaint at complainant's costs.

Wherefore the complainant prays that said final decree may be reversed and that the complainant's prayer for relief may be granted.

LEWIS P. WINGERT,
Complainant.

H. F. WINGERT,
MILLER WINGERT, Solicitors.

## APPEAL BOND.

(439) Filed August 30th, 1909.

Know all men by these presents, that we, Lewis P. Wingert, as principal, and the Fidelity and Deposit Company of Maryland, a body corporate, duly authorized by its charter to become sole surety on bonds, as surety, are held and firmly bound unto the First National Bank of Hagerstown, Maryland, a body corporate, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, Harvey H. Heyser and S. Lewis Lamkin in the full and just sum of two hundred dollars ($200) to be paid to the said the First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steefey, Walter D. Willson, Harvey H. Heyser, and S. Lewis Lamkin, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents. Sealed with our seals and dated this 28th day of August on the year of our Lord one thousand nine hundred and nine.

Whereas, lately at a term of the United States Circuit Court for the District of Maryland in a suit depending in said court, between the said Lewis P. Wingert, as complainant, and the First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. New-
(440) comer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, Harvey H. Heyser and S. Lewis Lamkin, as defendants, a decree was rendered against the said Lewis P. Wingert and the said Lewis P. Wingert having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said the First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, Harvey H. Heyser and S. Lewis Lamkin citing and admonishing them to be and appear at a United States Circuit Court of Appeals for the Fourth Circuit to be holden at Richmond on the day in the said citation mentioned:

Now, the condition of the above obligation is such, that if the said Lewis P. Wingert shall prosecute his appeal to effect,

and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; *a*lse to remain in full force and virtue.

LEWIS P. WINGERT, [Seal]
FIDELITY & DEPOSIT COMPANY OF MARYLAND,
By CHAS. R. MILLER, Vice-Prest. [Seal]
Attest:
GEO. H. GIST, Asst. Secy.

Sealed and delivered in presence of—

JOHN A. HENRUS.

Approved by—

THOS. J. MORRIS, Judge.

## CITATION.

UNITED STATES OF AMERICA, ss:

The President of the United States to the First National Bank of Hagerstown, Maryland, a body corporate, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, Harvey H. Heyser and S. Lewis Lamkin—Greeting:

(441) You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Fourth Circuit, to be holden at Richmond on the 28th day of September next, pursuant to an appeal from a decree of the Circuit Court of the United States for the District of Maryland in your favor passed in a cause in said court wherein Lewis P. Wingert is the complainant, and you are defendants—to show cause, if any there be, why the decree rendered against the said complainant in said cause mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Thomas J. Morris, Judge of the Circuit Court of the United States for the District of Mary-

land this 30th day of August, in the year of our Lord, one thousand nine hundred and nine.

THOS. J. MORRIS,
District Judge.

[Seal of Court]

Attest:

ARTHUR L. SPAMER,
Clerk U. S. Circuit Court for the District of Maryland.

Service of the within citation admitted this 3d day of September, 1909.

C. A. LITTLE,
of Atty. for the Defendants.

## ORDER TO TRANSMIT RECORD.

(442) And thereupon, it is ordered by the court here, that a transcript of the record and proceedings of the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Fourth Circuit, and the same is transmitted accordingly.

Test: ARTHUR L. SPAMER, Clerk.

## CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
District of Maryland, } to-wit:

I, Arthur L. Spamer, Clerk of the Circuit Court of the United States for the District of Maryland, do certify that the foregoing is a true transcript of the record and proceedings of the said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of said Circuit Court this 22nd day of September, 1909.

{Seal of Court}

ARTHUR L. SPAMER, Clerk.

And on the same day, to-wit: on September 28, 1909, the appearance of Henry F. Wingert, Miller Wingert, and Wyndham R. Meredith for the appellant is entered, order filed.

Afterwards, to-wit; on October 1, 1909, the appearance of Charles A. Little and George R. Gaither for the appellees, is entered, order filed.

Afterwards, to-wit; on October 19, 1909, twenty copies of the printed record are filed.

*Motion of Appellant to Advance Cause on Argument Docket.*

Filed Nov. 4, 1909.

United States Circuit Court of Appeals, Fourth Circuit.

No. 937.

LEWIS P. WINGERT, Appellant,
vs.
FIRST NATIONAL BANK OF HAGERSTOWN, MARYLAND, et als., Appellees.

Appeal from the Circuit Court of the United States for the District of Maryland, at Baltimore.

To the Honorable the Judges of the Circuit Court of Appeals for the Fourth Circuit:

The appellant in the above styled case respectfully makes this his motion in writing that said cause be advanced upon the docket of this court for as early a hearing as this Honorable court can give it consonant with the business of the term.

The case concerns the right of Lewis P. Wingert, plaintiff below, the appellant, a stockholder of the said First National Bank of Hagerstown, Maryland, to an injunction to restrain the directors except William Wingert, a duly elected and qualified director of said bank, from tearing down their three story bank building with the intention of erecting in its stead a six story office building, and also with the right to an injunction to restrain the directors of said bank, except the said William Wingert, from erecting in its stead a six story office building, only one of which stories is to be used by the bank in the transaction of its business, the other five stories to be rented out for offices to the public.

The question of the illegality of the bank's answer filed in said cause on March 27, 1909 was raised also by counsel for plaintiff at the hearing of the court below on March 31, 1909, on a motion not to receive the answer of the said bank.

The appellant, plaintiff below, filed his bill while the bank was occupying its bank building and before the destruction of its bank

building as contemplated was begun, and the learned Judge of the lower court on the 10th day of March, 1909, granted a restraining order against the defendant bank and its directors. But on hearing the motion not to receive the bank's answer and the motion for a preliminary injunction in the case on the 31st day of March, 1909, overruled the motion not to receive said answer and refused to grant said motion for a preliminary injunction and dissolved said restraining order passed as aforesaid on March 10th, 1909. The court overruled a motion made by counsel for the defendants to dismiss plaintiff's bill of complaint. The court below denied an application made in writing by the plaintiff on May 10th, 1909, to preserve unimpaired plaintiff's right of action. The depositions, exhibits and pleadings were submitted on July 6, 1909, on briefs in accordance with an expressed wish of the court below. On August 20, 1909, a final decree was entered in said cause refusing said injunction and dismissing plaintiff's bill.

The directors of said bank, except the said William Wingert have torn down and destroyed their former bank building and are proceeding with the work of carrying out their plans for the new six story office building, though the appellant, plaintiff below, has prosecuted his case with all due diligence.

Respectfully submitted,

H. F. WINGERT,
MILLER WINGERT,
WYNDHAM R. MEREDITH,
*Counsel for Appellant.*

And on the same day, to-wit; November 4, 1909, the Court, in Open Court, assigned the case for argument on Tuesday, November 23, 1909.

At the November Term, 1909, of our said Circuit Court of Appeals, to-wit; on November 24, 1909, the said cause came on to be heard and was argued by counsel before Goff, Circuit Judge, and Brawley and Connor, District Judges, and submitted.

Afterwards, at the same term, to-wit; on the 16th day of December, 1909, the Court announced and filed its opinion, which is as follows, to-wit:

United States Circuit Court of Appeals, Fourth Circuit.

No. 937.

LEWIS P. WINGERT, Appellant,
versus
FIRST NATIONAL BANK OF HAGERSTOWN, MARYLAND, FRANK W. MISH, ISAAC ANKENEY et al., Appellees.

Appeal from the Circuit Court of the United States for the District of Maryland, at Baltimore.

[Argued November 24, 1909; Decided December 16, 1909.]

Before Goff, Circuit Judge, and Brawley and Connor, District Judges.

Henry F. Wingert (Miller Wingert on brief) for the appellant, and Charles A. Little, and George R. Gaither for the appellees.

Per Curiam:

The decree complained of is without error. The opinion of the court below on which said decree is founded, in our judgment properly disposes of the questions of law involved in this case, and is adopted as the conclusion reached by this court on the assignments of error found in the record:

Said opinion reads as follows:

"MORRIS, *District Judge:*

"This is a bill for an injunction filed by Lewis P. Wingert on his own behalf (and on behalf of such other stockholders of the First National Bank of Hagerstown, Maryland, as should elect to become parties complainant) against the Bank and against its directors.

"The bill alleges that the First National Bank of Hagerstown, Maryland, is a National Bank organized and incorporated under the Act of Congress authorizing the organization of National Banks.

"That it has a capital stock of $100,000 divided into 10,000 shares of $10 each.

"That the complainant Lewis P. Wingert is the owner of 151 shares of the par value of $1,510.

"That the Bank owns a lot of ground in Hagerstown which is improved by a banking house in which it is now doing business, and which the bill alleges is sufficient for the Bank's uses and of which the second and third floors are rented out to tenants.

"That the directors of said Bank are about to tear down the present building and erect in its place at a cost of $60,000 a six story building of which the first story is designed for the use of the Bank and the remaining five stories are designed to be rented out for offices and places of business.

"That the contemplated action of said National Banking Corporation is *ultra vires* and prohibited by the provisions of the National

Banking Act. That a diversion of so large a portion of the funds of the bank from its legitimate business is not consonant with proper banking methods and that the complainant has addressed to the President and Directors a formal written protest calling upon them to desist from said illegal action.

"That notwithstanding said protest the said directors are about to cause the present banking house to be torn down and intend thereafter to erect on said lot the six story bank and office building aforesaid. The bill then charges that by the restrictions of the act of Congress governing National Banks the corporation can lawfully hold only such real estate 'as shall be necessary for its immediate accommodation in the transaction of its business' and that the action aforesaid of said Directors is not only unwise as a business proposition and a diversion of the Bank's fund from legitimate uses, but is contrary to the act of Congress, that the Bank cannot lawfully enter upon a real estate business such as the construction of a large and expensive office building to be rented out for general purposes. The bill prays an injunction restraining the Bank from erecting on the site of the present bank building or any other lot belonging to or acquired by the Bank a six story building and from tearing down the present bank building for the purpose of erecting in its stead such six story office building and from changing the present bank building more than shall be necessary for its immediate accommodation in the transaction of its business.

"The Bank and all of the directors (except William Wingert) answered the bill alleging that the lot owned by the Bank is in the center of the business part of Hagerstown surrounded by the principal commercial and public buildings of the city and is in a location peculiarly adapted for an office building such as is contemplated. That the present building has been used for about thirty years and during that time but little money has been spent on it in repairs or improvements and that it is in such condition that considerable money must be spent on it to make it suitable and convenient for properly conducting the business of the Bank therein.

"That the Bank has over and above its capital a surplus of $100,000 and about $32,000 of undivided earnings and is in a most flourishing condition doing a large business and having a very large amount of deposits. That the lot of ground alone is worth from $35,000 to $40,000 although carried at a valuation of only $10,000.

"That the proposed expenditure will be taken out of the undivided profits and will not diminish the surplus of the Bank and will be a safe and productive investment of its funds. That there is a demand in Hagerstown for such an office building and a number of persons have already applied for offices in it and that the rents to be obtained will reduce the cost of the Bank's own quarters to a very small sum.

"That at a special meeting of the Directors at which all the respondents (except Heyser, the Bank's Cashier) and including William Wingert were present, all the directors voted in favor of the proposed improvement except William Wingert, a brother of the complainant, who alone opposed the contemplated improvements.

"That the said proposed action was also submitted to the individual stockholders of whom 75% endorsed the action of the Directors.

"It is to be noticed that this is not the case of a National Bank about to purchase real estate for the purpose of erecting thereon a six story office building as a business enterprise.

"In the present case the lot of ground has belonged to the Bank since its organization having previously belonged to the Hagerstown Savings Bank to all of whose assets the Bank succeeded.

"It is therefore simply a question whether or not the Bank which is and has been for many years the rightful owner of a lot of ground improved by its bank building can alter and enlarge the improvement on it so as to furnish better accommodation for the business of the bank and at the same time provide offices which can be rented to tenants.

"There is no charge in the bill and no statement in the testimony challenging the good faith of the Directors. All except William Wingert appear in the honest exercise of their best judgment to be of opinion that the proposed expenditure of the Bank's funds is wise and beneficial and for the best interest of the Bank.

"Who then is to determine the wisdom or the unwisdom of such an expenditure? Is the minority stockholder or the single director who out of twelve directors opposes it, or the Judge of the Court, or is it the Board of Directors to whom the management of the affairs of the Bank has been committed by the stockholders who own it.

"There can be but one answer to this question.

"In an extreme case of a wasteful, unjustifiable expenditure of the funds of a corporation by its directors so great as not to be consistent with good faith the court will interfere but this case is altogether wanting in any such fact.

"The amount that may be reasonably expended on a Bank building is a question into which enter a great many considerations properly to be determined by the men selected to manage the Bank's affairs.

"In this case there appears nothing which would justify the court in condemning the action of the directors on the ground of its manifest unwisdom.

"The other ground urged by the complainant is that the proposed action is violative of the restriction which permits a National Bank to hold only such real estate as shall be necessary for its immediate accommodation in the transaction of its business, and that therefore the erection of a building which will contain offices not necessary for the business of the Bank is not permitted by the law, although that method of improving the lot may be the most beneficial use that can be made of it. It is matter of common knowledge that the actual practice of National Banks is to the contrary.

"Where ground is valuable it may probably be truly said that the majority of National Bank Buildings are built with accommodations in excess of the needs of the Bank for the purpose of lessening the Bank's expense by renting out the unused portion.

"If that were not allowable many smaller banks in cities would be driven to become tenants as the great cost of the lot would be pro-

hibitive of using it exclusively for the banking accommodation of a single Bank. As indicative of the interpretation of the law commonly received and acted upon reference may be made to the reply of the comptroller of the currency to the inquiry by the Bank in this case asking whether the law forbids the Bank constructing such a building as was contemplated.

"The reply was as follows:

" 'Your letter of the 9th instant received, stating that the directors contemplate making improvements in the Bank building and inquiring if there is anything in the national banking laws prohibiting the construction of a building which will contain floors for offices to be rented out by the bank as well as the banking room.

" 'Your attention is called to the case of Brown & Schleir, 118 Fed. Rep., 981, in which the court held that—"If the land which a national bank purchases or leases for the accommodation of its business is very valuable it may exercise the same rights that belong to other landowners of improving it in a way that will yield the largest income, lessen its own rent, and render that part of its funds which are invested in realty most productive." '

"This seems to be the common sense interpretation of the Act of Congress and is the one which prevails.

"The testimony tends to support the contention of the defendants that the Bank's lot of ground has increased greatly in value with the increasing business of the city and is capable of a more profitable use than with its present improvements; and that the Bank has a large surplus which can be more profitably employed by the contemplated use of it than it is at present. It is to be noticed that one of the stockholders has joined with Lewis P. Wingert in this suit and become a party complainant although it seems probable that the Wingert family who together own about one-tenth of the total capital stock do side with the complainant in this controversy.

"There are some technical points which the complainant has pressed in argument.

"First that the filing of the answer of the Bank was not authorized at a properly called meeting of the directors.

"It appears that at a regularly called meeting held April 13, 1900, it was voted to tear down the present building and erect on the site a new six story building in conformity with the plans theretofore adopted. At that meeting all the directors voted in the affirmative except William Wingert who voted in the negative.

"Afterwards when this bill was filed by Lewis P. Wingert against the Bank and all its directors the answer of the Bank and of all the Directors, except William Wingert, was prepared by counsel and a meeting of the Directors was called at which the answer of the Bank was read and approved and the answer of the individual defendant directors except William Wingert was signed by each one of them.

"The objection urged is that William Wingert one of the directors was not notified of this meeting and that therefore the answer filed by the bank ought not to be received because not adopted by a legally called meeting of the directors.

"The matter of the proposed improvement had been fully canvassed at previous directors' meetings and had been determined upon at a meeting at which the director William Wingert was present and at which his was the only dissenting vote and the bank had proceeded with the proposed work. He had then made formal written protest and his brother had filed this bill of complaint making him one of the defendants.

"The filing of the Bank's answer was a matter of course. The wording of the answer was in this case mere matter of detail. It was signed by the President of the Bank and sworn to by him. It was not a matter of such independent importance that it could not be filed until approved by a regularly called meeting of the directors.

"There are quite a number of exceptions to the admissibility of testimony mostly objections to questions and answers on cross examination. Although some of the testimony is objectionable as immaterial, in the view I have taken of the case it is not important whether the objections are sustained or not. The result would be the same either way and I shall not prolong this opinion by considering them.

"I will sign a decree denying the injunction and dismissing the bill."

Affirmed.

Afterwards, at the same term, to-wit; on December 17, 1909, the Court here made and entered the following decree, to-wit:

*Decree.*

Filed and Entered December 17, 1909.

United States Circuit Court of Appeals, Fourth Circuit.

No. 937.

LEWIS P. WINGERT, Appellant,
vs.
FIRST NATIONAL BANK OF HAGERSTOWN, MARYLAND, FRANK W. MISH, ISAAC ANKENEY and Others, Appellees.

Appeal from the Circuit Court of the United States for the District of Maryland.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Maryland, and was argued by counsel.

On consideration whereof, It is nor here ordered, adjudged, and decreed by this Court, that the decree of the said Circuit Court, in this cause, be, and the same is hereby affirmed, with costs.

Dec. 17th, 1909.

NATHAN GOFF.

*Petition for Appeal.*

Filed Dec. 17, 1909.

United States Circuit Court of Appeals for the Fourth Circuit.

LEWIS P. WINGERT, Appellant.
against
FIRST NATIONAL BANK OF HAGERSTOWN, MD., FRANK W. Mus Isaac Ankeney, Christian H. Horst, Charles M. Little, Frances E Miller, Charles McCauley, Wolgang M. Newcomer, John D. Ne comer, William Wingert, J. Grason Steffey, Walter D. Wils Harvey H. Heyser, S. Lewis Lamkin, Appellees.

Petition for Appeal.

The above named appellant, Lewis P. Wingert, conceiving hims aggrieved by the final decree made and entered on the 17th day December, 1909, by the United States Circuit Court of Appeals f the Fourth Circuit, refusing the injunction prayed for and affirm ing the decree of the Circuit Court of the United States for the Di trict of Maryland, with cost to appellees, doth hereby appeal fro said decree of said Circuit Court of Appeals to the Supreme Court the United States, for the reasons specified in the assignment of erro which is filed herewith, and he prays that this appeal may be allowe and that a transcript of the record, proceedings and papers, upo which said decree was made, duly certified and authenticated, may b sent to the Supreme Court of the United States.

And he will ever pray, etc.

H. F. WINGERT,
MILLER WINGERT,
*Solicitors for Appellant*

*Assignment of Error.*

Filed Dec. 17, 1909.

Assignment of Error Filed With the Petition of Lewis P. Wingert for an Appeal.

And now comes the petitioner, Lewis P. Wingert, by H. F. Winger and Miller Wingert, his Attorneys, and says:

That the United States Circuit Court of Appeals for the Fourth Circuit erred in their decree passed December 17th, 1909, affirming the decree pronounced on August 20th, 1909, by the Circuit Court of the United States in and for the District of Maryland.

H. F. WINGERT,
MILLER WINGERT,
*Solicitors for Appellant*

*Order Allowing Appeal.*

Filed Dec. 17, 1909.

United States Circuit Court of Appeals, Fourth Circuit.

The Court upon reading the petition for appeal and the assignment of error therewith, this day filed by Lewis P. Wingert, praying for an appeal from the decree of this court, entered on the 17th day of December, 1909,—

It is ordered that an appeal to the Supreme Court of the United States from said decree be and the same is hereby allowed, and that a certified transcript of the record, proofs, papers and proceedings therein be forthwith transmitted to the said Supreme Court of the United States.

It is further ordered that the appeal bond be fixed at the sum of five hundred dollars, the same to operate as a bond for costs.

NATHAN GOFF,
*Senior Circuit Judge Presiding.*

Richmond, Va., December 17, 1909.

*Bond.*

Filed Dec. 17, 1909.

Fidelity and Deposit Company of Maryland.

Home Office: Baltimore, Maryland.

Know all men by these presents, that we Lewis P. Wingert, as principal, and the Fidelity and Deposit Company of Maryland, a body corporate, duly authorized by its charter to become sole surety on bonds, as surety, are held and firmly bound unto the First National Bank of Hagerstown, Maryland, a body corporate, Frank W. Mish, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grayson Steffey, Walter D. Wilson, Harvey H. Heyser and S. Lewis Lamkin in the full and just sum of Five Hundred Dollars ($500.00) to be paid to the said the First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grayson Steefey Walter D. Wilson, Harvey H. Heyser, and S. Lewis Lamkin, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 17th day of December in the year of our Lord one thousand nine hundred and nine.

Whereas, lately at a term of the United States Circuit Court of Appeals for the Fourth Circuit in a suit depending in said court, between the said Lewis P. Wingert, as appellant, and the First National Bank of Hagerstown, Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grayson Steffey, Walter D. Wilson, Harvey H. Heyser and S. Lewis Lamkin, as appellees, a decree was rendered against the said Lewis P. Wingert and the said Lewis P. Wingert having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said First National Bank of Hagerstown Maryland, Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles A. Little, Francis H. Miller, Charles McCauley, Wolfgang M. Newcomer, John D. Newcomer, William Wingert, J. Grayson Steffey, Walter D. Wilson, Harvey H. Heyser and S. Lewis Lamkin citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the day in the said citation mentioned:

Now, the condition of the above obligation is such, that if the said Lewis P. Wingert shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

LEWIS P. WINGERT. [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

[Seal of Fidelity & Deposit Co.]

By LEON M. NELSON. [SEAL.]
*Att'y in Fact.*
By SIGMUND HUTZLER, *Agent.*

Witness:
H. F. WINGERT.
MILLER WINGERT.

Dec. 17/09. Approved.
NATHAN GOFF.

*Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the First National Bank of Hagerstown, Maryland, a corporation; Frank W. Mish, Isaac Ankeney, Christian M. Horst, Charles M. Little, Francis H. Miller, Charles McCauley, Wol-gang M. Newcomer, John D. Newcomer, William Wingert, J. Grason Steffey, Walter D. Wilson, Harvey H. Heyser, and S. Lewis M. Lamkin, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, District of Columbia, within thirty days after the date of this citation, pursuant to an appeal from a decree of the United States Circuit

Court of Appeals for the Fourth Circuit at Richmond, Virginia, in your favor, passed in a cause in said Court wherein Lewis P. Wingert is petitioner and you are respondents to show cause, if any there be, why the said decree rendered against the said petitioner in said cause mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 17th day of December, in the year of our Lord one thousand nine hundred and nine.

NATHAN GOFF.

This is to certify that I, William Chrissinger, a deputy United States Marshal in and for the District of Maryland, have served on Harvey H. Heyser Cashier of the First National Bank of Hagerstown, Maryland, the foregoing citation and that I have left with him a copy thereof this eighteenth day of December, 1909, at 11 o'clock A. M. Sharp.

WILLIAM CHRISSINGER,
*Deputy United States Marshal in and for the District of Maryland.*

*Order to Transmit Record.*

And thereupon it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States, and the same is transmitted accordingly.

Teste:—

HENRY T. MELONEY, *Clerk.*

*Clerk's Certificate.*

UNITED STATES OF AMERICA,
*Fourth Circuit, ss:*

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the aforegoing is a true transcript of the record and proceedings in the therein entitled cause as the same remains upon the records and files of the said Circuit Court of Appeals.

In Testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, on this 18th day of December, A. D. 1909.

[Seal United States Circuit Court of Appeals, Fourth Circuit.]

HENRY T. MELONEY,
*Clerk U. S. Circuit Court of Appeals, Fourth Circuit.*

Endorsed on cover: File No. 21,939. U. S. Circuit Court of Appeals, 4th Circuit. Term No. 713. Lewis P. Wingert, appellant, vs. The First National Bank of Hagerstown et al. Filed December 20th, 1909. File No. 21,939.

/ 3

Office Supreme Court, U. S.
FILED.
DEC 20 1909
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909

No. [redacted] 176

LEWIS P. WINGERT,
APPELLANT,

vs.

THE FIRST NATIONAL BANK OF HAGERSTOWN, MARYLAND, ET. AL., APPELLEES.

# MOTION OF APPELLANT FOR AN ADVANCEMENT OF THIS CAUSE TO AN EARLY HEARING.

H. F. WINGERT,
MILLER WINGERT,
Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1909

---

**No.**.....

---

LEWIS P. WINGERT,
APPELLANT,

VS.

THE FIRST NATIONAL BANK OF HAGERSTOWN, MARYLAND, ET. AL., APPELLEES.

---

# MOTION OF APPELLANT.

---

Appeal from the United States Circuit Court of Appeals for the Fourth Circuit.

The appellant in the above entitled cause respectfully makes this his motion in writing that said cause be advanced upon the docket of this Court for as early a hearing as this Honorable Court can give it consonant with the business of the term.

The Appellant in this Court was the Appellant in the United States Circuit Court of Appeals for the Fourth Cir-

cuit, and also the plaintiff in the United States Circuit Court for the District of Maryland. The appellant represents to the Court that unless there is an early hearing in the case any decree of the Court passed in respect to the appellant's prayer for relief will be nugatory.

This is an injunction case. Two injunctions are prayed for in the Appellant's prayer for relief. If the injunction prayed for first should be granted by the Court it would be nugatory. If the injunction prayed for second should be granted by the Court it would be nugatory—unless it is granted at an early date. The case is an important and an unusual one and discloses some astonishing features. It involves a question of the application of a clause of the National Bank Act not heretofore passed upon by the Federal Courts of this country; the clause is as follows: "A National Banking association may purchase, hold and convey real estate for the following purposes and no others:"

First "such as shall be necessary for its immediate accommodation in the transaction of its business."

In California National Bank vs. Kennedy, 167; U. S. 362, this court says:

"It is settled that The United States Statutes relative to National Banks constitute the measure of the authority of such corporations and that they can not rightfully exercise any powers except those expressly granted or which are incidental to carrying on the business for which they are established."

Reaffirmed in First National Bank of Oldtown vs. Converse, 200, U. S. 225.

Bank vs. Townsend, 139, U. S. 67, 73.

The case concerns the right of Lewis P. Wingert, appellant below, a stockholder of said First National Bank of Hagerstown, Maryland, to an injunction to restrain the directors, except William Wingert, a duly elected and qualified director of said bank, from tearing down their

three-story bank building with the intention of erecting in its stead a six-story office building, and also with the right to an injunction to restrain the directors of said bank, except the said William Wingert, from erecting in its stead a six-story office building, only one of which stories is to be used by the bank in the transaction of its business, the other five stories to be rented out for offices to the public.

At the time of bringing this suit the Appellant, his mother, brothers and sisters owned approximately one-eighth of the stock of the bank, which was capitalized at One Hundred Thousand dollars, divided into ten thousand shares of the par value of Ten Dollars per share. Its affairs were in a prosperous condition.

The question of the illegality of the bank's answer, filed in said cause on March 27, 1909, was raised also by counsel for plaintiff at the hearing of the court below on March 31, 1909, on a motion not to receive the answer of the said bank.

The appellant, plaintiff below, filed his bill while the bank was occupying its bank building and before the destruction of its bank building as contemplated, was begun, and the learned Judge of the lower court on the 10th day of March 1909, granted a restraining order against the defendant bank and its directors. But on hearing the motion not to receive the bank's answer and the motion for a preliminary injunction in the case on the 31st day of March, 1909, overruled the motion not to receive said answer and refused to grant said motion for a preliminary injunction and dissolved said restraining order passed as aforesaid on March 10, 1909. The court overruled a motion made by counsel for the defendants to dismiss plaintiff's bill of complaint. The court below denied an application made in writing by the plaintiff on May 10, 1909, to preserve, unimpaired, plaintiff's right to action. The depositions, exhibits and pleadings were submitted on July 6, 1909, on briefs in accordance with an expressed wish

of the court below. On August 20, 1909, a final decree was entered in said cause refusing said injunction and dismissing plaintiff's bill.

An Appeal was taken to the Circuit Court of Appeals for the Fourth Circuit.

The said Circuit Court of Appeals affirmed the decree of the Court below.

Opinion of the Circuit Court of Appeals:

"The decree complained of is without error. The opinion of the court below on which said decree is founded, in our judgment properly disposes of the questions of law involved in this case, and is adopted as the conclusion reached by this court on the assignments of error found in the record."

This appeal was granted by the same Circuit Court of Appeals.

The directors of said bank, except the said William Wingert, have torn down and destroyed their former bank building and are proceeding with the work of carrying out their plans for the new six-story office building, though the appellant, plaintiff below, has prosecuted his case with all due diligence.

Respectfully submitted,

H. F. WINGERT,

MILLER WINGERT,

Counsel for Appellant.

IN

SUPREME COURT OF THE UNITED STATES

October Term, [illegible]

No. [illegible] 176

LEVI P. STEGNER,
Appellant,

vs.

FIRST NATIONAL BANK OF HAMMONTON, NEW JERSEY, and LAND AND OTHERS,
Appellees.

BRIEF OF APPELLANT.

H. P. Wanger,
Myles Wanger,
Counsel for Appellant.

## INDEX.


| | Page |
|---|---|
| Cover Page | |
| Title Page | 1 |
| Statement of Case | 3 |
| Assignment of Errors | 5 |
| Plaintiff's Letter of Protest | 6 |
| Bill of Complaint | 7 |
| Prayer for Relief | 9 |
| Restraining Order Passed and Cause Set for Hearing. | 9 |
| Illegality of Bank's Answer, Motion Ne Recipiantur.... | 10 |
| Cases Referred to | 10 |
| Preamble to National Bank Act | 13 |
| Commentaries on Preamble | 14 |
| United States Statutes | 15 |
| National Banks Deemed Citizens of States in Which Located. Act August 13, 1888 | 17 |
| Interpretation of Statutes | 17 |
| Ultra Vires | 25 |
| Right of Stockholders to Enjoin | 51 |
| Testimony | 52 |
| Restraining Order | 57 |
| Common Sense View in Favor of Statute | 60 |
| Recapitulation | 61 |
| In Contempt | 64 |

# Supreme Court of the United States.

LEWIS P. WINGERT,
Appellant,

VERSUS

FIRST NATIONAL BANK
of Hagerstown, Md., and others
Appellees.

---

## STATEMENT OF CASE.

Lewis P. Wingert, the Appellant, a stockholder of the First National Bank of Hagerstown, Maryland, brought this suit to prevent the wanton destruction of the Bank's splendid three-story Bank Building by the Directors.

The suit was brought also to prevent the diversion of the Bank's funds from the Channel of the Banking business into Real Estate and to prevent the Bank from engaging in the Real Estate business by erecting a six-story office building, only one story of which is to be used by the bank and the other five stories to be converted into offices to be rented to the public for an income to the bank. When this suit was brought the Appellant, his Mother, Brothers and Sisters owned approximately one-eighth of the capital stock of the Bank.

The Bank was occupying the said Bank Building and its affairs were in a prosperous condition.

The building and equipment which the directors destroyed has been estimated to be worth $30,000. R. P. 82.

The improvements of the destroyed Bank Building compared favorably with those of other banks in the town. Record pages 69, 70 and 76.

The contemplated office building and improvement

will cost $75,000. Record page 76. Hagerstown has a population of 18,000.

The facts are admitted. The law is plain, clear and strong.

The law does not justify the course of the appellees and when the appellees proffer facts to justify their actings and doings the facts proffered are either hearsay evidence or mere matter of opinion.

This is an injunction suit and comes up from The United States Circuit Court of Appeals for the Fourth Circuit on an Appeal prayed by Lewis P. Wingert also Appellant in the said United States Circuit Court of Appeals and plaintiff in the Circuit Court of The United States in and for the District of Maryland.

This suit was filed in the United States Circuit Court because Section 5242 Compiled Statutes of the United States, sub-title National Banks, in part reads as follows: "and no attachment, injunction or execution shall be issued against such association or its property before final judgment in any suit, action or proceeding in any State, County or Municipal Court." . .

The case is concerned with the right of Lewis P. Wingert, Appellant (the plaintiff below, a stockholder of the First National Bank of Hagerstown, Maryland) to an injunction to restrain the directors of said First National Bank from tearing down and demolishing the bank's three-story brick bank building, situate on West Washington Street, in Hagerstown, Maryland, with the intention of erecting in its stead a six-story office building and also to an injunction to restrain the said directors from erecting in the place of the bank's building a six-story office building, the first story to be used by the bank for banking room, directors' room and accessories and the other five stories to be made into offices to be rented to the public for an income to the bank.

The suit presents a contention—apart from the question of the illegality of the Bank's answer—involving only two questions the one question a matter of fact, the other question a matter of law.

The matter of fact, the decision of the directors to tear

down the bank building and to erect a six-story office building as alleged in the plaintiff's bill. The defendants in their answer admit the allegations of the plaintiff on this question and thus the matter of fact is settled. Rec. P. 20.

The question of law is whether the directors of the bank have the power under the law governing the First National Bank to do what they have decided to do, namely to tear down their present bank building and erect in its stead a six-story office building.

At the time of filing this suit the bank was doing business in the said bank building and its business and affairs were in a prosperous condition.

The First National Bank of Hagerstown, Maryland, was organized in 1865 under the Act of the Congress of the United States passed June 3rd, 1864, and known as the National Bank Act.

The plaintiff alleges that the said Bank is prohibited by a proper construction of Section 5137 United States Compiled Statutes, title National Banks, from having the right to destroy and utterly demolish its present Bank building with the intention to erect in its stead a six-story office building, and that such actions and doings are in violation of law and of the objects and purposes intended to be secured by the creation of such a corporation. R. P. 4.

These allegations the Defendants (the Bank) denies, and thus the only question in the case—a question of law—is presented for determination. Rec. Pages 4 and 21.

ASSIGNMENT OF ERRORS.—Record page 331.

And now comes the Complainant, Lewis P. Wingert, and makes and files with the Petition for Appeal herein, an Assignment of Errors as follows:

The Honorable, The Circuit Court of The United States Erred:

(a) In overruling the motion interposed by the Complainant, Lewis P. Wingert, not to receive the answer of the defendant, to-wit, the First National Bank of Hagerstown, Maryland. Record pages 43 and 51.

(b) In dismissing the restraining order passed and filed in said cause March 10th, 1909. Rec. P. 51 and 52.

(c) In refusing to extend and to grant to the Complainant, Lewis P. Wingert, the relief prayed for in his bill of complaint. Record pages 5, 6, 9, 51 and 329.

(d) In refusing to extend and to grant to the Complaint, Lewis P. Wingert, the decree prayed for in his bill of complaint. Record page 5.

(e) In refusing to extend and to grant to the Complainant, Lewis P. Wingert, the relief prayed for in his petition to preserve unimpaired the plaintiff's right of action. Record pages 53, 54, 55, 56 and 57.

(f) In dismissing said bill of complaint at complainant's costs. Record page 331.

## PLAINTIFF'S LETTER OF PROTEST

Before filing his bill of complaint the plaintiff wrote a personal letter addressed to the board of directors of the bank and sent it to the board while they were in session protesting against the contemplated tearing down of the bank's building and protesting also against erecting in its stead a six-story office building. After this letter was read to the board of directors and while they were still in session the directors decided to employ one, S. Lewis Lamkin, Contractor, to superintend and direct the work of tearing down the bank's building and also the work of erecting and equipping the six-story office building and bank vault. Record page 8?

(Rec. P. 4, paragraph 7, and affidavit of plaintiff p. 7) Rec. p. 21 paragraph Fifth—

Paragraph (7) of Plaintiffs bill (Rec. p. 4) reads as follows :

(7.) And your orator further avers that said protest having been delivered to the President of the said Bank at

its banking offices and that notwithstanding and in defiance of said protest and demand on the part of your orator that said contemplated illegal action by said Bank, its directors and officers, should not be consummated; a special meeting of the directors of the said the First National Bank was subsequently held on or about March 9th, 1909, whereat it was decided to tear down and demolish and utterly destroy the present three-story brick building and bank-vault erected as aforesaid on its said Washington Street lot and to proceed with the erection in its stead a six-story office building of the character described in paragraph six of this Bill. That at the same meeting the said directors employed a certain S. Lewis Lamkin, contractor and builder, one of the defendants named herein to superintend and direct the work of tearing down the present structure and the work of erecting and equipping the authorized six-story office building and bank vault afore mentioned.

Fifth section Bank's answer (Rec. P. 21) reads as follows :

In answer to the seventh paragraph of said Bill of Complaint this respondent admits all the allegation thereof except that it denies the allegation therein contained, that said contemplated action by the Bank (meaning the tearing down of the old building and the erection of a new six-story building) is illegal..

## BILL OF COMPLAINT.

Plaintiff's bill filed on March 10th, 1909, after alleging that the plaintiff owns 151 shares of the Capital Stock of said bank, charges among other things that the bank is prohibited by a proper construction of Section 5137, United States Compiled Statutes, Sub-title National Banks, from having the right to destroy and utterly demolish its present bank building with the intention and design to erect in its stead a six-story office building, also that the bank cannot by law enter upon the real estate business and construct and maintain a large and expensive office building to be rented out for money rent. That such actions and doings

are in violation of law and of the objects, designs and purposes intended to be served by the creation of such corporations. (Rec. p. 4, par. 8.)

That the expense of the contemplated office building will exceed the sum of Sixty Thousand Dollars and that such sum will be paid out of moneys of the Bank, withdrawn from its legitimate business, and that the said course of building will afford just ground for action by the government for the forfeiture of its charter and may have a speculative effect on the value of its capital stock. (Rec. p. 4, par. 9.)

Paragraph 8 and 9 of Plaintiff's bill, (Rec. p. 4) reads as follows :

(8.) And your orator charges that the said Bank is prohibited by a proper construction of Section 5137 United States (6) Compiled Statutes, Sub-title 62, National Banks, from having the right to destroy and utterly demolish its present Bank building and raze the same to the ground with the intention and design to erect in its stead a six-story office building and cannot by law have the right to change, modify or improve said bank building more than shall be necessary for its immediate accommodations in the transaction of its business. And the said Bank cannot by law enter upon the real estate business and construct and maintain a large and expensive office building to be rented out for money rent, and that such actings and doings are in violation of law and of the objects, designs and purposes intended to be served by the creation of such corporation.

(9.) And your orator charges that the expense and outlay of the authorized work and improvements of said six-story office building will exceed in the aggregate the sum of sixty thousand dollars, and that such sum will be paid out of moneys of the Bank withdrawn from its legitimate business; that the said course of building which is now threatened to be pursued by said Bank will afford just

ground for action by the government for the forfeiture of its charter and may have speculative effect on the value of its capital stock, all of which will work irreparable injury to the interests of your orators and the other stockholders.

Sixth section of Bank's answer (Rec. p. 21) reads as follows :

This respondent denies all the allegations of the eighth and ninth paragraphs of said Bill of Complaint.

## PRAYER FOR RELIEF.

The bill prays that the defendants, their agents and servants and each and every one of them may be restrained preliminarily, provisionally and perpetually by the order and injunction of the Court from erecting on the site of the present bank building or on any other lot belonging to or which may be acquired by said bank a six-story office building, and from tearing down or demolishing or destroying the present bank building of the First National Bank of Hagerstown, Maryland, and also for a decree of the Court that the directors have no right to destroy, modify, change or improve said bank building more than shall be necessary for its immediate accommodations in the transaction of its business. Rec. p. 5, par. 1-2.

## RESTRAINING ORDER PASSED AND CAUSE SET FOR HEARING.

On motion of plaintiff's counsel on March 10th, 1909, the court passed an order in said cause setting down for hearing on March 31st, 1909 a motion for a preliminary injunction and passed an order restraining the directors, their agents and servants, from tearing down the bank building until the hearing of said motion and until the further order of the Court and fixing the bond of the plain-

tiff at One Thousand Dollars, and requiring the bank to answer by March 27th, 1909. (Rec. P. 9 and 10.)

Plaintiff gave bond, Rec. P. 11 and restraining order was issued and served.

## ILLEGALITY OF BANK'S ANSWER.

### Motion Ne Recipiantur.

At the hearing on March 31st, 1909, the plaintiff filed a motion not to receive the bank's answer. (Rec. P 19-23,) alleging that said answer was illegal, null and void (Rec. P. 43.)

The answer of the bank is illegal and void because the said answer was presented for consideration at and if adopted at all was adopted at a special meeting of the board of directors of the bank of which William Wingert, a duly elected and qualified director, was not notified and of which he had no knowledge and at which meeting he was not present. F. W. Mish, president of the bank, made an affidavit to the answer of the bank alleging that he was duly authorized to sign the answer of the bank and to make the affidavit thereto.

William Wingert, as such director of said First National Bank,was not consulted in any way as to the signing of said answer or the making of said affidavit.

(Affidavits of Lewis P. Wingert and William Wingert, in support of Motion.) (Rec. P. 44-45.)

Affidavit of F. W. Mish. (Rec. P. 50) admits William Wingert was not present when answer was laid before directors.

Deposition of William Wingert, (Rec. P. 80 and 81.)

Deposition of F. W. Mish. Rec. P. 145 and 155.

## CASES REFERRED TO.

Johnston vs. Jones, 23 N. J. Equity, 228.

The Directors are a Board, and can act only when

legally convened. For this all must have notice to be present.

Stowe et al. vs. Wise, 7th Connecticut Reports, 214.

"To render the vote of the incorporated company valid as the act of the corporation, a meeting at which it was passed must have been made in the mode prescribed by the charter or by-laws, or in the absence of any such provision, by a personal notice to the members."

Whitehead vs. Hamilton Rubber Co., 52 N. J. Equity, 82.

"That all the Directors are entitled to notice, either expressed or implied, of any meeting at which any business is transacted, in order that the business may be binding upon all the persons concerned, admits of no question."

Johnston vs. Jones, 23 N. J. Equity, 216.

The opportunity to deliberate, and if possible to convince their fellows is the right of a minority of which they cannot be deprived by the arbitrary will of the majority.

13 Pennsylvania State, 133.

"The minority are entitled to be heard at a Directors' meeting."

Cook on Corporations, Vol. 3rd, Page 2257.

Notice to all is necessary, although a quorum is present.

Pike County vs. Rowland, 94 Pennsylvania State, 238.

"If a board meeting be specially convened, the general rule is, that notice must be served upon every member entitled to be present."

Whitehead vs. Hamilton Rubber Co., 52 N. J. Equity, 78.

"Of all other meetings, especially those at which any business outside the original affairs of the corporation is transacted, express notice must be given of a time and place, and object and purpose of the meeting."

Curtiss vs. Saloon, 130 California, 345.

"The decisions are quite uniform in holding that as to all special meetings of the Board of Directors, notice must be given."

Cook on Corporations, Val. 3, Page 2247.

"A mortgage, authorized at a special meeting of directors, no notice of which had been given to two directors who were not present, is not enforcible."

Relley vs. Campbell, 134 California, 175.

"A mortgage, authorized at a meeting of the board of directors, of which no notice was given, and some of the directors were absent, is not valid."

Bank vs. Dandridge, 12 Wharton, 78.

"If a meeting is a special one, all must be notified, or any action s void."

10 Cyc., 224.
"Notice must be given of a special meeting."

France on Corporations, Page 107.

France on elements of Corporation Law, "Unauthorized Acts," Sections 48 and 49.

The Directors are created a Board and not a corporate body.

Farwell vs. Houghton Copper Works, 8 Fed. Rep., 66.

"Where a by-law of a corporation required its Secretary to give due notice of meetings of the Board of Directors, held, that important action taken at a meeting from which a director whom the Secretary made no attempt to notify, that such a meeting was to be held, was absent, is unauthorized."

Order overruling motion ne receipiantur passed Mar. 31, 1909. (Rec. P. 51.) (Order appealed from Rec. P. 331 (a.)

## PREAMBLE TO NATIONAL BANK ACT.

The National Bank Act. Act June 20, 1874.

Chap. 15, Sec. 1. An act entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof." approved June 3, 1864, shall hereafter be known as "the national-bank act."

The province of National Banks is to provide a currency, to accommodate the public with currency, to facilitate business transactions, and commerce, especially in times of panics and in times of monetary depressions, not to provide the public with offices. Nor even to make money.

## COMMENTARIES ON PREAMBLE.

1818. In the case of the United States vs. Palmer, 3 Wheaton, 610-631, A. D. 1818; so in Beard vs. Rowan, 9 Peters, 301, the Court says:

"The preamble in the act may be resorted to, to aid in the construction of the enacting clause when any ambiguity exists."

1834. In United States vs. Fisher, 2 Cranch, 358-386, Chief Justice Marshall said:

"Neither party contends that the title of an act can control plain words in the body of the Statute and neither denies that taken with other parts it may assist in removing ambiguities. Where the intent is plain nothing is left to construction. Where the mind labors to discover the design of the legislature it seizes everything from which aid can be desired, and in such case the title claims a degree of notice, and will have its due share of consideration."

1835. Beard vs. Rowan, 9 Peters, 309.

1877. Huntington vs. Savings Bank, 96 U. S., 388:

"The title of the act incorporating it indicates its purpose, namely an act to incorporate a National Savings Bank" and the only powers given it were those we have mentioned—powers necessary to carry out the only avowed purpose, which was to enable it to receive deposits for the use and benefits of depositors dividing the income or interest of all deposits among its depositors or their legal representatives."

1892. Coosaw Mining Co. vs. South Carolina, 144 U. S., 562:

"Neither the title nor the preamble indicates a purpose to enlarge the right given by the act of 1870 for twen-

ty-one years to one for an indefinite period. While express provisions in the body of an act cannot be controlled or restrained by the title or preamble, the latter may be referred to when ascertaining the meaning of a statute which is susceptible of different constructions."

1896. Davis vs. Elmira Savings Bank, 161 U. S. 275, Vol. 16, 502:
Ruger C. J., in Nassau Bank vs. Jones, 95 N. Y., 115 says:

"The business of banking as defined by Webster is in the establishment of a common fund for lending money, discounting notes, issuing bills, receiving deposits, collecting the money on notes deposited, negotiating bills of exchange, &c."—

1867. Pittsburg vs. Pittsburg, 1st Natl. Bank, 55 Pa. State Rep. 45.
1868. Stetson vs. Bangor, 56 Maine, 274.
1880. Pollard vs. State, 65 Alabama, 628.

UNITED STATES STATUTES:

In California National Bank vs. Kennedy, 167, U. S. 363, A. D. 1897, the Court says:

"It is settled that The United States Statutes relative to National Banks constitute the measure of the authority of such corporations and that they can not rightfully exercise any powers except those expressly granted or which are incidental to carrying on the business for which they are established."

Bank vs. Townsend, 139 U. S., 67, 73.
Reaffirmed in 1906 in First National Bank of Oldtown vs. Converse 200, U. S. 225, identically.

United States Statutes, Sect. 5137, define the powers of National Banks to hold real estate as follows :

"A National Bank may purchase, hold and convey real estate for the following purposes and no others:

First: Such as shall be necessary for its immediate accommodation in the transaction of its business:

Second: Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

Third: Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Fourth: Such as it shall purchase at sales under judgments, decrees or mortgages held by the association or shall purchase to secure debts due it. But no such association shall hold the possession of any real estate under mortgage or the title and possession of any real estate purchased to secure any debts due to it for a longer period than five years."

Paragraph 19, Sect. 5136, Article Seventh—specifies the incidental powers of National Banking Associations as follows:

"To exercise by its Board of Directors or duly authorized officers or agents, subject to law all such incidental powers as shall be necessary to carry on the business of banking by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt, by receiving deposits, by buying and selling exchange, coin and bullion, by loaning money on personal security, and by obtaining, issuing and circulating notes according to the provisions of this title."

"But no such association shall transact any business except such as is incidental and necessarily preliminary to its organization until it has been authorized by the Comptroller of Currency to commence the business of banking."

138, Sec. 5200 (as amended 1906.) "The total liabilities to any association, of any person or of any company, corporation or firm for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed one-tenth part of the amount of the capital stock of such associa-

tions, actually paid in and unimpaired, and one-tenth part of its unimpaired surplus fund. Provided, however, that the total of such liabilities shall in no event exceed thirty per centum of the capital stock of the association."

## NATIONAL BANKS DEEMED CITIZENS OF STATES IN WHICH LOCATED. ACT AUGUST 13, 1888.

24. Sec. 4. All national banking associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located; and in such cases the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State. The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases commenced by the United States or by direction of any officer thereof, or cases for winding up the affairs of any such bank.

## INTERPRETATION OF STATUTES:

On the interpretation of Statutes the Courts have decided at follows:

In Hadden vs. The Collector ,72 U. S., 107:

"What is termed the policy of the government with reference to any particular legislation is too unstable a ground upon which to rest the judgment of the Court in the interpretation of statutes."

Ogden vs. Strong, Fed. Cases No. 10460.

The fundamental rule in construing statutes is to ascertain the intention of the legislature. It is only in statutes of doubtful meaning that Courts are authorized to indulge conjectures as to the intention of the legislature or to look to consequences in the construction of a law."

Schriefer vs. Wood, Fed. Cases No. 12,481, 5 Blatch F. 215.

U. S. vs. Warner, Fed. Cases No. 16,643:

"In the construction of statutes effect must be given to the words used by the legislature if there be no uncertainty or ambiguity in their meaning."

Carroll vs. Carroll, 16 Howard, 275-287:

"Upon questions discussed in the opinion and not necessary to the judgment, or not considered at all, the case cannot be regarded as a decision, because as observed by Mr. Justice Curtis speaking for this Court; to make it so there must have been an application of the Judicial mind to the precise question necessary to be determined to fix the rights of the parties."

C. & O. Canal Co. vs. B. & O. R. R., 4 G. & J., 1:

"In the construction of a statute effect should be given to each part of the enactment if possible."

Parkinson vs. State 14 Md., 184:

"The words of the statute must be interpreted according to their common acceptation."

Pitman vs. Flint, 27 Mass. 405:

"A mere failure of Justice will not be sufficient grounds for construing a statute against its clear meaning, so as to give a court jurisdiction, as it is only where the construction is doubtful that the argument from a failure of Justice applies."

In re Tipple, 13 N. Y. Supp., 263:

"Statutes should be read and interpreted according to the natural and most obvious import of the language em-

ployed without resorting to subtle and forced construction for the purpose either of limiting or extending their operations."

Tompkins vs. The First Nat. Bank, 18 N. Y. 234.

"A court has no authority to extend the law beyond the fair and reasonable meaning of its terms because of some supposed policy of the law or because the legislature did not use proper words to express its meaning."

Hyatt vs. Taylor, 42 N. Y. 258:

"Where the meaning of the words employed in a statute is clear the Courts cannot qualify it by construction on the grounds of public policy."

Denton vs. Wickwire, 54 N. Y. 226:

"When the language of the statute is unambiguous the Court must enforce the act as it reads. They cannot supply defects or relieve inconvenience by construction."

Enching vs. Simmons, 28 Wis. 272.

"The view that the Courts may against the plain language of the statutes and in opposition to the intent clearly expressed by the words mitigate the 'violence of the letter' by introducing exceptions where the clause itself contains none so as to relieve in cases of hardship or particular inconvience is now rejected."

Bigelow C. J., Hood vs. Lynn, 1 Allen (Mass.) 103.

"Abuses of power and violations of right derive no sanction from time and custom."

Motion for preliminary injunction.

1896. Levis vs. City of Newton, 75 Fed. 884. 887.

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others: First: Those granted in express words. Second: Those necessarily or fairly implied in or incident to the powers expressly granted. Third: Those essential to the declared objects and purposes of the corporation not simply convenient but indespensible. Any fair reasonable doubt concerning the existence of the power is resolved by the courts against the corporation, and the power is denied. Of every municipal corporation the charter or statute by which it is created is its organic act. Neither the corporation nor its officers can do any act, make any contract, incur any liabilities not authorized thereby or by some legislative act applicable thereto. All acts beyond the scope of the powers granted are void. Mr. Justice Nelson in United States vs. Minturn, says:

"It is a well settled rule of construction of grants by the legislature to corporations, whether public or private, that only such powers and rights can be exercised under them as are clearly comprehended within the words of the act, or derived therefrom by necessary implication, regard being had to the objects of the grant. Any ambiguity or doubt arising out of the terms used by the legislature must be resolved in favor of the public." "Judge Dillon in his municipal corporations, 4th Edition quotes with approval from the decision of Chief Justice Bigelow in Hood vs Lynn, 1 Allen 103: "Abuses of power and violations of right derive no sanction from time and custom." A casual or occasional exercise of power by one or a few towns will not constitute usage. It must not only be general and of long continuance; but what is more important, it must also be a custom necessary to the exercise of some corporate power, or the enjoyment of some corporate right.

1897. City of Newton vs. Levis 79 Fed. Rep. 717.

"The granting or withholding a preliminary injunction rests in the sound judicial discretion of the Court and the only question presented by the appeal is whether or not the Court below erred in the exercise of that discretion under the established legal principles which should have guided it. When the appellee made his motion for an injunction, grave questions of law were presented which required careful and deliberate examination. But the Court below knew that it must ultimately consider and determine these matters at the final hearing of the case. If, meanwhile it refused to issue the injunction, the property and business of the Electric Company, and the security of the appellee, would be immediately destroyed. Its final decree, if it should be in his favor, would be utterly nugatory. If it granted the injunction, it would do no more than to hold the parties in the same relation, and their property in the same situation, in which they had been, with the consent of the appellants for more than eight years, and it would inflict no substantial loss or injury, if the final decree should be in their favor. In other words, to grant the injunction was to preserve the property of all parties in statue quo and prevent substantial damage to anyone, whatever the final decree might be, while to refuse it, was to permit the immediate destruction of the property of the Electric Company and the security of the appellee, to allow the infliction of irreparable loss upon them, and to render the suit and its decision useless. If the final decree should be in favor of the appellee. There can be no question of the duty of the chancellor to issue an injunction under such circumstances. The controlling reason for the existence of the right to issue a preliminary injunction is that the Court may thereby prevent such a change of the conditions and relation of persons and property during the litigation as may result in irremediable injury to some of the parties before their claims can be investigated and adjudicated. When the questions to be ultimately decided are serious and doubtful, the legal discretion of the judge in

granting the writ should be influenced largely by the consideration that the injury to the moving party will be certain great irreparable if the motion is denied while the inconvenience and loss to the opposing party will be inconsiderable and may well be indemnified by a proper bond, if the injunction is granted. A preliminary injunction maintaining the status quo may properly issue whenever the questions of law or fact to be ultimately determined in a suit are grave and difficult, and injury to the moving party will be immediate certain and great if it is denied, while the loss or inconvenience to the opposing party will be comparatively small and insignificant if it is granted."

Jenson vs. Norton 64 Fed. 662.

1898. Allison vs. Corson 88 Fed. Rep. 581.

"When the appeal was taken the court below properly continued the restraining order in force until the questions it presents could be decided by this court. The same considerations which led to this wise exercise of its discretion might well have induced that court to hold matters in statuo quo, by the issue of the injunction, until a final hearing and decision of the case could be reached. No substantial loss or inconvience would have been entailed upon the appellees by the allowance of the writ. Why, then should not the injunction have been issued ?" Why should not the rights of these parties have been held where they were, without loss to anyone, until the final hearing? The controlling reason for the existence of the right to issue a temporary injunction is that the court may thereby prevent such a change of the conditions of persons and property during a litigation as may result in irremediable injury to some of the parties before their claims can be investigated and adjudicated. Undoubtedly an injunction ought not to be issued unless substantial questions of law or fact whose decision in favor of the moving party would entitle him to ultimate relief, are presented. If it is

reasonably clear that he cannot ultimately succeed—if his pleading discloses no cause of action or defense—no injunction should be granted. But if the questions to be ultimately settled are serious and doubtful, if the injury to the moving party will be certain, great, and irreparable." If the motion is denied, and the final decision is in his favor; while if the decision is otherwise, the inconvenience and loss to the opposing party will be inconsiderable, and may well be indemnified by a proper bond, if the injunction is granted, it is the duty of the chancellor to issue it. A preliminary injunction, maintaining the status quo, may properly issue whenever the questions of law or fact to be ultimately determined in a suit are grave and difficult, and the injury to the moving party will be immediate, certain and great, if it is denied, while the loss or inconvenience to the opposing party will be comparatively small and insignificant if it is granted.

City of Newton vs. Lewis, 75 Fed. Rep. 715.

Dooley vs. Hadden, 74 Fed. Rep. 429.

* * * We will not extend this opinion by a decision of the questions presented here. Enough has been said to show that the appellant did not fail, on his application for the injunction, to at least raise a serious question whether he would not be entitled on a final hearing to the perpetual injunction which he sought. * * * Meanwhile the appellees should be enjoined from making or receiving a tax deed until the case is finally decided. Such an injunction will entail no substantial loss or inconvenience or risk of it upon the appellees if they have a good defense to this suit, but will merely delay the execution of their deed a few months, while to refuse it would cause the loss of all the rights which the appellant seeks to enforce if his claims are well founded. These claims are certainly not so frivolous and devoid of merit that they can be rightfully dismissed without a full hearing and serious consideration.

Blout vs. Societe Anoyne Du Filtre, 53 Fed. Rep. 98.

"The object and purpose of a preliminary injunction is to preserve the existing state of things until the rights of the parties can be fairly and fully investigated and determined upon strictly legal proofs, and according to the course and principles of Courts of Equity. The prerequisites to the allowance and issuance of such injunction are that the party applying for the same must generally present a clear title or one free from reasonable doubt, and set forth acts done or threatened by the defendant which will seriously or irreparably injure his rights under such title, unless restrained. The legal discretion of the judge or court in acting upon applications for provisional injunctions is largely controlled by the consideration that the injury to the moving party, arising from a refusal of the writ is certain and great while the damage to the party complained of, by the issuance of the injunction is slight or inconsiderable.

In Great Western R. R. Co. vs. Birmingham & O. J. Ry Co. 2 Phil. Ch. 602.

It was said by Lord Cotterham: "It is certain that the Court will in many cases interfere and preserve property in statuo quo during the pendency of a suit in which the rights to it are to be decided, and that without expressing, and often without having the means of forming, any opinion as to such rights. It is true that the court will not so interfere if it thinks that there is no real question between the parties; but, seeing that there is a substantial question to be decided, it will preserve the property until such question can be regularly disposed of. In order to support an injunction for such purpose, it is not necessary for the court to decide upon the merits in favor of the plaintiff."

In Glascott vs. Lang, 3 Mylne & C. 455.

It is said by the same learned Judge that, "In looking through the pleadings and evidence for the purpose of an injunction, it is not necessary that the court should find a case which would entitle the plaintiffs to relief at all events. It is quite sufficient if the Court finds upon the pleadings and upon the evidence a case which makes the transaction a proper subject of investigation in a court of equity."

In Georgia vs. Braiseford 2 Dallas 402 it is said: "In order to support a motion for an injunction, the bill should set forth a case of probable right, and a probable danger that the right would be defeated without the special interposition of the Court."

## ULTRA VIRES:

On the law of Ultra Vires a long line of decisions of eminent Jurists have been reported, as follows:

1804. Head vs. Providence Insurance Co., 2 Cranch 127.

Chief Justice Marshall, in delivering the opinion of the Court, says: "Without ascribing to this body which in its corporate capacity is the mere creature of the act to which it owes its existence, all the qualities and disabilities annexed by the common law to ancient institutions of this sort it may correctly be said to be precisely what the incorporating act has made it, to derive all its powers from that act, and to be capable of exerting its faculties only in the manner which the act authorizes."

1819. Dartmouth College vs. Woodward, 4 Wheaton 518 (463):

Chief Justice Marshall delivering the opinion of the Court says:

"A corporation is an artificial being, invisible, intangible and existing only in contemplation of law, being

the mere creature of law it possesses only the properties which the charter of its creation confers upon it either expressly or as incidental to its very existence. There are such as are supposed best calculated to effect the object for which it was created."

1827. Bank vs. Dandridge, 12 Wheaton 78:

"The Court says, Story J.: But whatever may be implied powers of aggregate corporations by the common law and the modes by which those powers are to be carried into operation, corporations created by statute must depend both for their powers and the mode of exercising them upon the true construction of the statute itself."

1830. Beaty vs. Knowler's Lessee, 4 Peters, 168:

"That a corporation is strictly limited to the exercise of those powers which are specifically conferred on it, will not be denied. The exercise of the corporate franchise, being restrictive of individual rights, cannot be extended beyond the letter and spirit of the act of incorporation."

1837. Charles River Bridge vs. Warren Bridge, 11 Peters 420.

1839. Bank of Augusta vs. Earle, 13 Peters 519:

1849. Perrine vs. Chesapeake & Delaware Canal Co., 9 Howard 172 (82), Taney, Chief Justice, said:

"Now it is a well settled doctrine of this Court that a corporation created by statute is a mere creature of the law and can exercise no powers except those which the law confers upon it, or which are incident to its existence.

The principle above stated is also an answer to the argument which places the right of the company to demand toll upon the ground that it is the absolute owner of the works and of the land it occupies and insists that it may,

therefore, like any other owner, demand compensation from any person passing over its property. The error of this argument consists in regarding the title of the Company to the property in question as derived to them upon common law principles and reassuring their rights by the rules of the common law. The corporation has no rights of property except those derived from the provisions of the charter nor can it exercise any powers over the property it holds except those with which the charter has clothed it. It holds the property only for the purposes for which it was permitted to acquire it. That is to effectuate the objects for which the legislature created it and whether it may lawfully demand compensation from a person whom it permits to pass over its property must depend upon the language of the charter and not upon the rules of the common law."

1855. Dodge vs. Woolsey, 18 Howard, 336:

Justice Wayne, says:

"It is now no longer doubted, either in England or the United States, that Courts of Equity in both have a jurisdiction over corporations, at the instance of one or more of their members; to apply preventive remedies by injunction, to restrain those who administer them from doing acts which would amount to a violation of charters or to prevent any misapplication of their capitals or profits, which might result in lessening the dividends of stockholders, or the value of their shares, as either may be protected by the franchise of a corporation, if the acts intended to be done create what is in the law denominated a breach of trust. And the jurisdiction extends to inquire into, and to enjoin as the case may require that to be done, any proceedings by individuals, in whatever character they may profess to act, if the subject of complaint is an imputed violation of a corporate franchise, or the denial of a right growing out of it, for which there is not an adequate remedy at law. 2 Russ & Mylne, Ch. R. Cunliffe vs. Manchester and Bolton Canal Co. 480; Ware vs. Grand Junction Water Company, 2 Russ & Mylne, 470; Bagshaw vs.

Eastern Counties Railway Company, 7 Hare Ch. R. 114; Angell & Ames, 4th ed. 424, and the other cases there cited It was ruled in the case of Cunliffe vs. The Manchester and Bolton Canal Company, 2 Russ and Mylne, Ch. R. 481, that where the legal remedy against a corporation is inadequate, a court of equity will interfere, and that there were cases in which a bill in equity will lie against a corporation by one of its members."

"It is a breach of trust towards a shareholder in a joint-stock incorporated company established for certain definite purposes prescribed by its charter if the funds or credit of the company are without his consent diverted from such purpose, though the misapplication be sanctioned by the votes of a majority; and, therefore, he may file a bill in equity against the company in his own behalf to restrain the company by injunction from any such diversion or misapplication. In the case of Ware vs. Grand Junction Water Co. 2 Russell & Mylne, a bill filed by a member of the company against it, Lord Brougham, said:

"It is said this is an attempt on the part of the company to do acts which they are not empowered to do by the acts of parliament," meaning the charter of the coupany, "so far I restrain them by injunction."

"Indeed an investment in the stock of a corporation must, by everyone, be considered a wild speculation if it exposed the owners of the stock to all sorts of risk in support of plausible projects not set forth and authorized by the act of incorporation, and which may possibly lead to extraordinary losses. The same jurisdiction was invoked and applied in the case of Bagshaw vs. The Eastern Counties Railway Company; so, also in Coleman vs. the same Company, 10 Beaven's Ch. Reports 1. It appeared in that case that the directors of the company for the purpose of increasing their traffic proposed to guarantee certain profits, and to secure the capital of an intended steam packet company, which was to act in connection with the railway. It was held such a transaction was not within the scope of their powers, and they were restrained by injunction. And in the second place that in such a case one

of the shareholders in the railway company was entitled to sue in behalf of himself and all other shareholders, except the directors, who were defendants, although some of the shareholders had taken shares in the steam packet company. It was contended in this case that the corporation might pledge, without limit, the funds of the company for the encouragement of other transactions, however various and extensive, provided the object of that liability was to increase the traffic upon the railway and thereby increase the traffic to the shareholders. But the master of the rolls, Lord Langdale, said, 'There was no authority for anything of that kind.'"

1858. Pearce vs. Madison & Indianapolis R. R. 21 Howard 441:

"Two corporations, created by the laws of Indiana to construct distinct though connecting lines of railroads in that State, were consolidated by agreement, and conducted the business of both lines under a common board of management, which gave notes in the name of the consolidated company in payment for a steamboat to be employed on the Ohio River and to run in connection with the railroads. After the execution of the notes and the acquisition of the steamboat, this relation between the corporations was legally dissolved. It was held that an action brought by an indorsee against the two corporations upon the notes could not be maintained. Mr. Justice Campbell, in delivering judgment, said: "The rights, duties and obligations of the defendants are defined in the acts of the Legislature of Indiana under which they were organized, and reference must be had to those to ascertain the validity of their contracts. They empower the defendants respectively to do all that was necessary to construct and put in operation a railroad between the cities which are named in the acts of incorporation. There was no authority of law to consolidate these corporations and to place both under the same management, or to subject the capital of the one to answer for the liabilities of the other, and so the courts of Indiana have determined. But in addition

to that act of illegality, the managers of these corporations established a steamboat line to run in connection with the railroads, and *thereby diverted their capital from the objects contemplated by their charters, and exposed it to perils for which they afford no sanction.* Now persons dealing with the managers of a corporation must take notice of the limitations imposed upon their authority by the act of incorporation. Their powers are conceded in consideration of the advantages the public is to receive from their discreet and intelligent employment, and the public have an interest that neither the managers nor stockholders of the corporation shall transcend their authority." Lord Langdale in Coleman vs. Eastern Counties R. R. said;" "Ample powers are given for the purpose of constructing and maintaining the railway and for doing all those things required for its proper use when made. But I apprehend that it has nowhere been stated that a railway company as such has power to enter into all sorts of other transactions. Indeed it has been very properly admitted that R. R. Companies have no right to enter into new trades or business not pointed out by the acts. But it has been contended that they have a right to pledge without limit the funds of the company for the encouragement of other transactions however various and extensive provided that the object of that liability is to increase the traffic upon the R. R. and thereby to increase the profit to the shareholders. There is however no authority for anything of that kind."

1875. First National Bank vs. National Exchange Bank, 92 U. S. 122.

Mr. Chief Justice Waite, says:

"A National Bank can exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking, by discounting or negotiating promissory notes, drafts, bills of exchange and other evidences of debt, by receiving deposits, by buying and sell-

ing exchange, coin and bullion; by loaning money on personal security; and by obtaining, issuing and circulating notes. Authority is thus given to transact such a banking business as is specified and all incidental powers necessary to carry it on is granted. These powers are such as are required to meet all the legitimate demands of the authorized business, and to enable the bank to conduct its affairs within the general scope of its charter, safely and prudently.

"To some extent it has been thought expedient in the National Banking Act to limit this power. Thus as to real estate it is provided that it may be accepted in good faith as security for or in payment of debts, previously contracted, but if accepted in payment it must not be retained over five years. Dealing in stocks is not expressly prohibited, but such a prohibition is implied from the failure to grant the power."

1876. Selden vs. Equitable Trust Co., 94 U. S. 420.

1877. Railroad Company vs. McCarthy, 96 U. S. 258.

1877. Huntington vs. Savings Bank, 96 U. S. 388.

Justice Strong delivering the opinion, said:

"The rules to be applied to the construction of corporate grants are well known. A corporation created by statute can exercise no powers and has no rights except such as are expressly given or necessarily implied."

1878. National Bank vs. Matthews, 98 U. S. 621:

"Sec. 5136 does not in terms prohibit a loan on real estate, but the implication to that effect is clear. What is so implied is as effectual as if it were expressed."

"The object of the restriction was obviously threefold. It was to keep the capital of the banks flowing in the daily channels of commerce; to deter them from embarking in hazardous real estate speculations and to prevent the

accumulation of large masses of such property in their hands, to be held as it were, in mortmain."

1878. Germania National Bank vs. Case, 99 U. S. 628.
1878. Thomas vs. Railroad Company, 101 U. S. 71.

In quoting with approval The East Anglican R. R. vs. Eastern Counties R. R. Co. The Court says:

"This covenant was void as beyond the power conferred by the charter; they cannot, said the Court, engage in a new trade, because they are incorporated only for the purpose of making and maintaining the Eastern Counties R. R. What additional power do they acquire from the fact that the undertaking in some way benefits their line? Whatever be their object or prospect of success they are still but a corporation for the purpose only of making and maintaining the Eastern Counties Railway; and if they cannot embark in new trades because they have only a limited arthority, for the same reason they can do nothing not authorized by their act and not within the scope of their authority." The Court further says:

"There is another principle of equal importance and equally conclusive against validity of this contract, which if not coming exactly within the doctrine of ultra vires as we have just discussed it shows very clearly that the R. R. Co. was without power to make such a contract. That principle is where a corporation like a Railroad Co. has granted to it by charter a franchise intended in large measure to be exercised for the public good, the due performance of those functions being the consideration of the public grant, any contract which disables the corporation from performing those functions which undertakes without the consent of the State, to transfer to others the rights and powers conferred by the charter and to relieve the grantees of the burden which it imposes is a violation of the contract with the State and is void as against public policy.

Justice Miller. "We take the general doctrine to be

in this country, though there may be exceptional cases, and some authorities to the contrary, that the powers of corporations organized under legislative statutes are such and such only as those statutes confer, conceding the rules applicable to all statutes that which is fairly implied is as much granted as what is expressed, it remains that the charter of a corporation is the measure of its powers, and that the enumeration of these powers implies the exclusion of all others."

New York & Maryland Line Railroad Co. vs. Winans 17 Howard 30.

1885. Penn. vs. St. Louis & Alton R. R. Co., 118 U. S. 290:

The Court said: "The decision in Thomas vs. Railroad Co., 101 U. S. 71, turned upon the power of the Company under its corporate authority to make the lease The plaintiffs in error who were the lessees, insisted that a corporation may at common law, do any act which is not either expressly or impliedly prohibited by its charter, although, where the act is unauthorized, a shareholder may enjoin its execution, and the State may, by proper process, forfeit the charter." To this the Court responded: "We do not concur in this proposition. We take the general rule to be in this country, though there may be exceptional cases and some authorities to the contrary, that the powers of corporations organized under legislative statutes are such only as those statutes confer. Conceding the rule applicable to all statutes that what is fairly implied is as much granted as what is expressed, it remains that the charter of a corporation is the measure of its powers and that the enumeration of these powers implies the exclusion of all others."

1888. Oregon vs. Oregon Railroad Company, 130 U. S. 1.

The Court says: "It may be considered as the established doctrine of this Court in regard to the powers of

corporations that they are such and such only as are conferred upon them by the acts of the legislatures of the several States under which they are organized. As was said in the case of Charles River Bridge, vs. Warren Bridge, 11 Peters, 420, in this Court the principle is recognized that in grants by the public nothing passes by implication. "The broad doctrine was established that a contract not within the scope of the powers conferred on the corporation *cannot be made valid by the assent of every one of the shareholders*, nor can it by any partial performance become the foundation of a right of action."

"It is to be remembered that where a statute making a grant of property or of powers or of franchises to a private individual or private corporation becomes the subject of construction as regards the extent of the grant, the universal rule is that in doubtful points the constructions shall be against the grantee and in favor of the government or the general public."

1888. Railroad Companies vs. Keokuk Bridge Co., 131 U. S. 384.

"The reasons why a corporation is not liable upon a contract ultra vires, that is to say, beyond the powers conferred upon it by the legislature, and varying from the objects of its creation, as declared in the law of its organization, are, 1st: The interest of the public, that the corporation shall not transcend the powers granted. 2nd: The interest of the stockholders, that the capital shall not be subjected to the risk of enterprises not contemplated by the charter, and therefore not authorized by the stockholders in subscribing for the stock. 3rd: The obligation of everyone entering into a contract with a corporation to take notice of the legal limits of its powers."

1890. Case vs. Kelley et al., 133 U. S. Reports 21.

"It may well be doubted whether the legislature can authorize a corporation to condemn land for any other than railroad purposes. The company unquestionably had no right to buy or condemn land for mere speculation

or farming purposes. The application therefore, to this Court, is for its aid in investing the company with the title to land which it never could have lawfully condemned and the title to which consistently with its charter it never could have received. The Court will not lend its aid to that end. Its duty to refuse it is none the less imperative because some of the defendants used their official relation to the Company to acquire the title for themselves to those lands. Had the several grantors made conveyances directly to the company, its title, although it may have been acquired in violation of its charter, could not, perhaps have been questioned collaterally, or otherwise than by the State in some appropriate proceeding for that purpose. To this there are two sufficient answers, the first of which is that if the statute creating this corporation gave it no power to receive and hold lands in the manner we have mentioned then it had no such power by virtue of any law of the State of Wisconsin for a corporation, in order to be entitled to buy or sell, to receive and hold the title to real estate must have some statutory authority of the State in which such lands lie to enable it to do so and the absence of such provision in the law of its incorporation does not create any general statute which authorized any such right."

1891. Central Transportation Company vs. Pullman Palace Car Company, 139 U. S. 24, 47, 67.

The Court says: "The clear result of these decisions may be summed up thus: The charter of a corporation, read in the light of any general laws which are applicable, is the measure of its power and the enumeration of those powers implies the exclusion of all others not fairly incidental. All contracts made by a corporation beyond the scope of those powers are unlawful and void, and no action can be maintained upon them in the Courts and this upon three distinct grounds: The obligations of every one contracting with a corporation to take notice of the legal limits of its powers. The interest of the stockholders not to be subjected to risks which they have never undertaken

and above all, the interest of the public that the corporation shall not transcend the powers conferred upon it by law."

"By a familiar rule, every public grant of property or of privileges or franchises, if ambiguous is to be construed against the grantee and in favor of the public; because an intention on the part of the government to grant to private persons or to a particular corporation, property or rights in which the whole public is interested, cannot be presumed unless unequivocally expressed or necessarily to be implied in the terms of the grant; and because the grant is supposed to be made at the solicitation of the grantee and to be drawn up by him or by his agents and therefore the words used are to be treated as those of the grantee and this rule of construction is a wholesome safeglard of the interest of the peblic against any attempt of the grantee by the insertion of ambiguous language to take what would not be obtained in clear and express terms."

1891. Logan County National Bank vs. Townsend, 139 U. S. 76.

Harlan J., said: "It would seem upon defendants theory of its powers to be too clear to admit of dispute that the act of Congress does not give a National Bank an absolute right to retain bonds coming into its possession by purchase, under a contract which it was without authority to make. In Bank vs. Matthews, 98 U. S. 621, it appeared that a National Bank loaned money upon the security of a note and a deed of trust of lands both of which were assigned to it. The Statute declared that a National Banking Association could loan money "on personal security" and could purchase, hold and convey real estate for certain named purposes and for no others:" among which was not included the securing of a present loan of money by a deed of trust or mortgage on real property."

1892. Coosaw Mining Company vs South Carolina, 144 U. S. 562.

1892. St. Louis V. & T. R. R. Co. vs. Terra Haute R. R. Co., 145 U. S. 393, the Court said:

"This was in substance and effect a lease of the railroad and franchise for a term of almost 1000 years and was a contract which neither corporation had the lawful power to enter into, unless expressly authorized by the State which created it, and which if beyond the scope of the lawful powers of either corporation was unlawful and wholly void, could not be ratified or validated by either or both and would support no action or suit by either against the other upon the question whether this contract was ultra vires of either corporation. This case cannot be distinguished in principle from Penn. R. Co. vs. St. Louis A. & T. H. R. R. Co., 118 U. S. 290."

In the same case in 33 Fed. Rep. 445, the Court said: "Any resident stockholder might have enjoined the execution and performance by a suit brought in due time but no such suit could be maintained after an acquiescence for the period stated and no one but a stockholder could object to the contract on that grounds."

1894. Armstrong vs. Western National Bank, 152 U. S. 346.

1896. Pearall vs. Great Northern Railway Co. 161 U. S. 646.

1896. Louisville vs. Kentucky, 161 U. S. 684.

1897. McCormick vs. Market Nat. Bank of Chicago, 165 U. S. 538, the Court said:

"The doctrine of ultra vires by which a cantract made by a corporation beyond the scope of its corporate powers is unlawful and void, and will not support an action rests, as this Court has often recognized and affirmed on three distinct grounds: The obligation of any one contracting with a corporation to take notice of the legal limits of its powers, the interest of the stockholders not to be subject to risks which they have never undertaken, and above all,

the interest of the public, that the corporation shall not transcend the powers conferred upon it by law, as said in

> "Pearce vs. R. R. Co. 21 Howard 441, Central Transportation Co. vs. Pullman Palace Car Co. U. S. 139, 28, 48."

"When the corporation is created by a charter granted by the legislature, any person dealing with it is bound to take notice of the terms of the charter, and of the general laws restricting or defining the powers of the corporation. In like manner when the corporation is formed under the general laws by the recording or filing in the public office of the required articles of association and certificate, any person dealing with the association is bound to take notice of the documents recorded or filed upon which, as authorized and controlled by the general laws, depend the existence of the corporation, the extent of its corporate powers;" and again in

"Oregon Ry. & Nav. Co. vs. Oregon Railway Co., 130 U. S. 1, 25, Central Transportation vs. Pullman Palace Car Co. above cited."

"It is settled by a long series of decisions of this Court that a lease of a railroad by one railroad corporation to another which is beyond the corporate powers of either, is unlawful and void, and cannot be made good by ratification or estopped, so as to sustain an action upon the lease; that this is so not only when the lease is ultra vires of the lessor corporation and therefore open to the objection of disabling it from performing those duties to the public, its performance of which was the consideration upon which it received its charter from the State, but even if the lease is ultra vires of the lessee corporation only, and therefore not open to that particular objection." Cases above cited: St. Louis V. T. H. T. Co. vs. Terra Haute, and I. R. Co., 145 U. S. 393-404.

"The case at bar is no less clear than those just referred to, Congress, indeed in establishing the system of National Banks, instead of undertaking to grant special charters of incorporation upon its own judgment of the

expediency of doing so in each case, has allowed corporations to be organized by voluntary acts of the associates, under the general conditions defined in the statute. But the capacity of these voluntary associations to make contracts and to transact business has not been left to depend upon their own will, however formally expressed, without any public authority having ever passed upon their responsibility or fitness."

"Doctrine rests on 3 grounds—McCormick vs. Bank, 165 U. S.

(1) Obligation of one contracting with corporation to take notice of the legal limits of its powers.

(2) The interest of the stockholders not to be subject to risks which they have never undertaken; and

(3) Above all, the interest of the public that the corporation shall not transcend the powers conferred upon it by law."

1897. California National Bank vs. Kennedy, 167 U. S. 362:

"It is settled that the United States Statutes relative to National Banks constitute the measure of the authority of such corporations and that they cannot rightfully exercise any powers except those expressly granted or which are incidental to carrying on the business for which they are established. Bank vs. Townsend 139 U. S. 67, 73.

The transfer of the stock in question to the bank being unauthorized by law, does the fact that under some circumstances the bank might have legally acquired stock in the corporation estop the bank from setting up the illegality of the transaction. Whatever divergence of opinion may arise on this question from conflicting adjudications from some of the state courts, in this Court it is settled in favor of the right of the corporation to plead its want of power, that is to say, to assert the nullity of an act which is an ultra vires act."

1898. Citizens Street Railway Co. vs. Detroit, 171 U. S. 54.

1899. First National Bank of Concord vs. Hawkins, 174 U. S. 364.

The First National Bank of Concord owned stock in the Indianapolis National Bank and this was a suit by the receiver of the Indianapolis National Bank to compel an assessment on the stock held by the First National Bank of Concord. The Court said: "Dealing in stock is not expressly prohibited but such prohibition is implied from the failure to grant the power."

1899. De leVergne R. M. Co. vs Germania Savings Institute, 175 U. S. 59.

1901. Scott vs. Dewesee, 181 U. S. 211.

1906. First National Bank of Ottowa vs. Converse, 200 U. S. 425.

"It is settled that the United States Statutes relative to National Banks constitutes the measure of the authority of such corporations and that they cannot rightfully exercise any powers except those expressly granted or which are incidental to carrying on the business for which they are established."

1906. Merchants National Bank vs. Wehrmann, 202 U. S. 295.

France "Elements on Corporation Law; Unauthorized Acts." Sec. 147-180.

1896. Safety Insulated Wire and Cable Co. vs. Mayor etc., of Balto. 74 Fed. Rep. 363.

The primary, indeed the sole, business of the corporation was to manufacture. Is the contract incident thereto and connected therewith? An incident power is one that is directly and immediately appropriate to the execution of the specific power granted, and not one that has slight or remote relation to it. Hood vs. R. R. Co. 22 Conn. But if a manufacturing company, in addition to the preparation of its goods for market, can enter into any contract which would tend to increase the consumption of its goods,

and promote their sale, it is impossible to fix a limit to its powers. Quoting Hood vs. R. R. Co. 22 Conn. Court says: "It would be absurd to hold that the directors under the idea of incidental powers, might do everything which they thought would bring passengers to their road. Such a limit is no limit. If they could do this under such a pretense, they could by direct appropriation of the company's funds build manufacturing villages along the road, and run steamboats to New York in connection with their road for this might increase their business. If the case be considered from the standpoint of the stockholders in this corporation, the correctness of this position will be more clear. The company was incorporated for the manufacture of insulated cables and wires, etc. The stockholders went into this adventure and risked their capital clearly, they incurred obligations for the excellence and market value of their manufactured products. This risk they knowingly took. Under the contract in question they were made to encounter the risk of damages for building, masonry, ironwork, proper paving and restoration of streets in a crowded city and all accidents occurring from the opening of the streets. Could these results have been indicated to them by anything in the articles of incorporation? Is it enough to say to them that by incurring a cost of $45,000 and all the danger from damages for any deficit or accident in its performance, a sale of $20,000 worth of manufactured product has been effected? It cannot be said that anything which will promote a demand for goods manufactured under the charter is within the incidental powers of the corporation, were this true, a corporation organized for the business of quarrying rock could contract for the erection of a costly building of which its rock could be used. A corporation organized for the manufacture of terra cotta pipes could contract for the sewerage of a large city.

1836. Steam Navigation Co. vs. Dandridge, 8 G. & J., 254, and 9 G. & J. 198.

In deciding therefore whether a corporation can make

a particular contract, we are to consider in the first place, whether its charter or some statute binding upon it forbids or permits it to make such a contract; and if the charter and valid statutory law are silent upon the subject; in the second place, whether a power to make such a contract may not be implied on the part of the corporation as directly or indirectly necessary to enable it to fulfill the purpose of its existence; or whether the contract is entirely foreign to that purpose. On page of the same book it is stated "that a corporation has no other powers than such as are specifically granted, or such as are necesesary for the purpose of carrying into effect the powers expressly granted, and that a corporation is confined to the sphere of action limited by the terms and intention of the charter."

1838. Bank of Chillicothe vs. Swayne et al., 8 Ohio, 257.

"But it is otherwise with corporations. A corporation is a body created by law, composed of individuals united under a common name, and having succession while it shall exist; it is the creature of the law, and derives all its powers and capacities from the law of its creation. The modern doctrine is, to consider corporations as having such powers as are especially granted by the act of incorporation, or as are necessary for the purpose of carrying into effect the powers expressly granted, and as not having any other, as a corporation is created by law, it is proper that in all cases where it attempts to act, *it should show by its charter of creation it has power so to act.* For a corporation created for the purposes of constructing a railroad or of acting as a library association to carry on banking operations, and to claim to do it under its charter, would be absurd, unless the power so to do was expressly or by implication authorized in its charter. If an agent is restricted by the power received from his principal, if the legislature of the state can not transcend the powers delegated in the contsitution, much less can a corporation go beyond the charter by which it exists. There is great propriety in holding corporations to the strictness of the

law by which they were created when it is *considered that a charter granted to a private company is in the nature of a contract, and cannot subsequently be revoked by the power which granted it without a violation of the constitution of the United States*, which is the supreme law of the land."

1853. Kean vs. Johnson, 1 Stockton Chancery, N. J., 407.

1857. Manderson vs. The Commercial Bank of Pa., 28 Pa. 379:

"*If it be clear that the owners of the Bank have no right to make use of its funds in the manner charged,an injunction can do no injury and is no more than giving the stockholders a proper measure of protection.* It may be a convenient practice for the President or Cashier to discount paper after the adjournment of the board of directors and to report the proceedings at the next meeting of the board; but it is one attended with peril to the stockholders; and if any of them object to it they have a right to insist on a strict compliance with the fundamental articles, on the faith of which they invested their money in the institution, a violation of the rule in relation to the rate of discount may expose the institution to the penalties for usury and may also put the continuance of the charter in doubt. A stockholder has a right to the necessary means to prevent a course of practice which may produce such results. If a bank may indulge in this practice, it is placed under constant temptation to withhold all accommodations from the business community at the time when they are most needed. By the non-existence of any substantial restriction upon their power to increase this description of currency to any amount, and by the practice of discounting upon the funds of their depositors, they enjoy further privileges of the same character. To allow them still further exemption from this law while individuals are bound by it would be unjust and oppressive. The banking privilege is one of great profit.

By conferring it upon a limited number of corpora-

tions and denying it to the people at large, the legislature designed to promote the public interest. The private advantage of the stockholders is but the incident of the grant. A bank is, therefore, bound by moral obligation, as well as by the fundamental articles of its constitution, to accommodate the business community to the extent of its means, at the rate of discount prescribed by its charter. There can be no private arrangement with its officers or friends nor any other contrivance by which this obligation can be lawfully evaded. In times of severe monetary pressure the duty of a bank becomes more imperative than at other times. By performing it faithfully the pressure may be greatly relieved. By disregarding it, for the purpose of using its funds to make enormous profits out of the commercial embarrassments of the community the financial distress is greatly increased. To stimulate the enterprise of the people by increasing its paper currency, and afterwards to withhold the usual facilities of business, for the purpose of using its funds for illegal speculations, brings ruin upon its customers where it was bound to afford them material aid. By such a course of dealing with its capital it runs counter to the chief end of its existence. It is true that these are considerations of a public character, and do not touch directly the private right of the plaintiff. But it is no new thing in the administration of individual justice to have some regard for the interests of the community. Upon the same principle the Courts should lend a ready ear to the complaints of stockholders, whose private rights are to be protected by the prevention of a grievous public wront."

1861. Hood vs. Lynn, 1 Allen (Mass.) 103.

Bigelow C. J. The general principle is well settled that municipal corporations, like other corporations aggregate, can exercise no powers other than those which are conferred on them by the act by which they are created, or such as are necessarily incident to the exercise of their corporate rights, the performance of their corporate duties and the accomplishment of the purposes for which they are constituted. The observance of this rule and the steady

and firm enforcement of it by courts of Justice are of the highest importance. In no other way can the majority be prevented from an oppressive and reckless use of power, or the minority protected against liability for an illegal and unauthorized expenditure of the public money. The petitioners were guilty of no laches in commencing these proceedings. They made their application to the court seasonably, and the respondents had ample notice that their proceedings were called in question and that the validity of their vote was to be brought to the test of judicial inquiry. The respondents therefore went on at their peril; and if they have expended the money of the city for an unlawful purpose, they must take the consequences of their own wrongful act. Injunction made perpetual.

1867. Zabriskie vs. Hackensack N. Y. R. R. Co., Vol. 3, C. E. Green, N. J. Equity Rep. 178.

1867. Venango National vs. Taylor, 56 Pa. Rep. P. F. Smith, 15.

"The Bank is a creature of the act, dependent upon it for all its powers, and controlled by all the restrictions which the act imposes, and creditors dealing with the bank can obtain only such rights as it is authorized to give."

1872. Fowler vs. Scully, 72 Pa. Rep P. F. Smith, 461.

"The banking powers of these associations are to be found in the 8th section, and are 'to carry on the business of banking by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt, by buying and selling exchange, coin and bullion; by loaning money on personal security, by obtaining, issuing and circulating notes acording to the provisions of the act.' In view of the rule of interpretation of such charters given us by the Federal Courts, and by maxim expressio unius est exclusio alterius, the argument might close with the terms of the power to loan money on personal security; for

agreeably to this rule and maxim, no other security than personal can be taken for money lent. This is the law of the bank's capacity and of its control. It accords also with the nature of banking as a business which is precisely described in the language of the law itself; the discounting and negotiating of promissory notes, drafts, bills and other evidences of debt (meaning, of course, debts ejusdem generis, such as checks, certificates of deposits &c.,) the buying and selling of bills of exchange, bullion and lending of money on personal security. The reasons are manifest."

"The business of a bank is commercial, not that of dealing in real estate, brokerage, &c. It therefore, does not buy and sell real estate, ground rents, mortgages, stocks, produce, &c. It deals in commercial paper, on the security afforded by the personal responsibility of drawers, endorsers and payers, and this because banks are created for the purposes of trade, which require ready access to loans of money and discounts on business paper made in the course of trade. Experience also has shown, that whenever banks abandon the legitimate practice of loaning or discounting on the well known standing of the parties to commercial paper, to lend money on the hypothecation of stocks, real estate, &c., alone in lieu of personal security, they enter an uncertain and unknown region of credit. The directors can well know or ascertain the standing of drawers and endorsers as men of capital or means in the community, but the moment they leave this plain field to enter the region of corporation stocks, real estate and liens they take a leap in the dark, and must resort to outside agents, such as lawyers, brokers, &c. The internal affairs and condition of a corporation are known to few, while the security of a mortgage rests on both title and liens requiring professional skill to explore them."

"The evident intent of Congress is that National Banks should be institutions of commerce, not dealers in real estate, stock or produce. What power there may be to accept an hypothecation of stocks in addition, and to strengthen a loan, we do not say. We are discussing the

power conferred to make or create loans. Another obvious purpose of confining their loans of money to personal security is to prevent these associations from splitting on the rock which has ruined so many banks, to wit, that of lending too much of their capital to one person or firm. The 29th section provides: 'That the total liabilities to any association or firm for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed one-tenth part of the amount of the capital stock of such association actually paid in.' Thus Congress had prohibited an undue aggregation of its capital in single hands even though each note or bill may be well secured by names upon it. Then what must we say of large aggregations of capital in the hands of one man without personal security on the faith of an estimated value of real estate and the risk of title and conflicting liens." * * * * "So that when compelled to wind up creditors and stockholders shall not then discover that their apparent assets are composed of their own decayed viscera, instead of outside personal security. In this way only can the public be made safe against mismanagement."

1875. Weckler vs. First National Bank of Hagerstown, Md., 42 Md. 581:

"And in this State the law is well settled that a corporation for a specific purpose not only can make no contract forbidden by its charter, but in general can make no contract which is not necessary either directly or incidentally, to enable it to answer that purpose. In deciding, therefore, whether a corporation can make a particular contract it must be considered in the first place, whether its charter or some statute binding upon it forbids or permits it to make such a contract; and if the charter and valid statutory law are silent upon the subject; in the second place, whether the power to make such a contract may not be implied on the part of the corporation as directly or incidentally necessary to enable it to fulfill the purpose of its existence or whether the contract is entirely foreign to

that purpose; a corporation has no other powers than such as are specifically granted or such as are necessary for the purpose of carrying into effect the powers expressly granted."

1879. Lazear vs. The Bank, 52 Md. 78.

1880. Davis vs. The R. R., 131 Mass. 258.

"A corporation has power to do such business only as it is authorized by its act of incorporation to do and no other. It is not held out by the government nor by the stockholders as authorized to make contracts which are beyond the purposes and scope of its charter. It is not vested with all the capacities of a natural person or of an ordinary partnership but with such only as its charter confers. *If it exceeds its chartered powers, not only may the government take away its charter, but those who have subscribed to its stock may avoid a contract made by the corporation in clear excess of its powers.* If it makes a contract manifestly beyond the powers conferred by its charter and, therefore, unlawful, a court of chancery on the application of a stockholder will restrain the corporation from carrying out the contract; and a court of common law will sustain no action on the contract against the corporation. It has been stated that these things to a small extent have frequently been done since the establishment of railways; but unless the acts so done can be proven to be in conformity with the powers given by the special acts of parliament, under which those acts are done, they furnish no authority whatever.

1884. Jones vs. Nassau Bank, 95 N. Y. 115.

"This case involved the question of the right of a bank, chartered under the law of New York, to subscribe for the stock of a R. R. Co. Ruger, Ch. J., said: "The character and quality of the securities in which they are authorized to employ their moneys, and the value of the business in which they are privileged to engage, have frequently been the subject of discussion in our courts with the same uniform tendency to so interpret the law as to

limit their business operations, and confine their loans and investments to such transactions as should best promote their security and solvency. Crocker vs. Whitney, 71 N. Y. 161. The spirit of the law, as well as a sound public policy, forbid these institutions from risking the moneys intrusted to their care in doubtful speculations and enterprises."

1889. Davis vs. Gemmill, 70 Md., 376.

1905. Western Maryland Railroad Co. vs. Blue Ridge Hotel Co., 102 Md., 307-324. Pearce J. Delivered the opinion of the Court:

"Corporations being mere creatures of law, possess only such powers as are expressly granted, together with such incidental and implied powers as are necessary to carry into effect those expressly granted. An incidental power is one that is directly and immediately appropriate to the execution of the specific power granted, and not one that has only slight or remote relation to it. It can in no case avail to enlarge the express powers and thereby warrant the corporation to devote its efforts or its capital to other purposes than such as its charter expressly authorize, or to engage in collateral enterprises, not directly but only remotely connected with its specific corporate purpose. Judge Seymour D. Thompson in 10 Cyc., 1146, says: 'Perhaps the most general statement which can be made of the doctrine of ultra vires is to say that the contract of a corporation which is unauthorized by or in violation of its charter or other governing statute, or entirely outside the scope of the purposes of its creation is void, in the sense of being no contract at all, because of a total want of power to enter into it.' And Mr. France in his recent excellent work on the elements of corporation law, Sec. 72, says: 'The transaction may be beyond the powers of the corporation, simply because it is foreign to the purposes expressed or implied in the charter; it may invoke the exercise of a power, not forbidden, but simply ungranted as for example; where a railroad company under-

takes to guarantee the expenses of a public festival.' In the better usage the term ultra vires is limited to acts of the latter class and many of the courts make a distinction between transactions which are illegal because forbidden and those which are simply in excess of the granted powers. In deciding, therefore, whether a corporation can make a particular contract, we are to consider in the first place whether its charter or some statute binding upon it, forbids or permits it to make such a contract, and if the charter and valid statutory law are silent upon the subject, and in the second place whether a power to make such a contract may not be implied on the part of the corporation as directly or incidentally necessary to enable it to fulfill the purpose of its existence, or whether the contract is entirely foreign to that purpose."

1881. Farwell vs. Houghton Copper Works Fed. Rep. Vol. 8:

Mathews, vs. Skinker, 62 Missouri, 329:

"Their business is to discount and negotiate promissory notes ,drafts, bills of exchange and other evidences of debt, and the buying and selling of bills, bullion and lending money on personal security.

To permit them to loan their money on real estate security would be destructive of their efficiency and defeat the object had in view in their creation. Instead of being agents for purposes of trade, dealing in commercial paper, discounting notes and furnishing the necessary facilities for loans, they would have their capital locked up in landed property and thus be powerless to carry on the business which induced their organization. These speculations in real estate are also hazardous and have no legitimate connection with the business of banking. They require the employment of outside parties to look after the land and examine titles and are apt to embark the bank into enterprises which sooner or later will end in insolvency. Congress doubtless had these considerations in view when it provided that the money should be loaned on personal security. When the mode of personal security

was declared and pointed out, that excluded all others for the maxim expressio unius est exclusio albirus must prevail in this case. But the intention does not rest merely on the provision requiring personal security on loans. Sec. 5137 specifies for what purposes National Banking Associations may purchase, hold and convey real estate and forbids their dealing in that kind of property for any other purpose. They may purchase and hold so much real estate as may be necessary for their immediate accommodation in the transaction of their business; such as may be mortgaged to them in good faith by way of security for debts previously contracted; such as shall be conveyed to them in satisfaction of debts previously contracted in the course of their dealings, and such as they shall purchase at sale under judgment, decrees or mortgages held by them, or shall purchase to secure debts already due. These are the specified instances and the only instances in which it is permissable for National Banking Associations to purchase or hold real estate. Aside from the real estate necessary for the transaction of their business they can only acquire that description of property to secure themselves for debts previously contracted.

The case of Brown vs. Schleier has not been referred to by Counsel for the appellant in their brief because it has no application to the case at bar. The question of law at issue in this case was not raised in the case of Brown vs. Schleier. The opinion handed down in that case by the Circuit Court of Appeals 118 Fed. Rep. 981 can not be considered a decision because there was not an "application of the Judicial mind to the precise question necessary to be determined to fix the rights of the parties." The Supreme Court of the United States took this position when the case was decided by it as reported in 194 U. S., 18.

---

## RIGHT OF A STOCKHOLDER TO ENJOIN.

The XIII rule in Green's Brice Ultra Vires 43 reads as follows:

"Any party to an Ultra Vires transaction may set up the defence thereof and any one corporator may call upon the Courts to restrain the Corporations from engaging therein."

City of Newton vs. Levis, 79 Fed. Rep. 717. Supra.
Allison vs. Carson, 88 Fed. Rep. 584. Supra.
Hill vs. Glasgow R. R. Co., 41 Fed. Rep. 610. Supra.
Dodge vs. Wolsey, 18 Howard 331.
Manderson vs. Commercial Bank of Pa., 28 Pa. 379. Supra.
Kean vs. Johnson, 1 Stockton's Chan. N. J., 407. Supra.
Zabriskie vs. Hackensack & N. Y. R R. Co., Vol. 3, C. E. Green's N. J. Equity Rep.
Elkins vs. Camden and Atlantic R. R. Co., 36 N. J. Equity page 5.

The brief filed by counsel for the Appellees in Circuit Court of Appeals below referred to Cooper vs. Hill. 94 Federal Reporter 586, from which we quote as follows: "The Statutes of the United States are the measure of the powers of National Banks and these corporations can lawfully exercise none but those there expressly granted, or those fairly incidental thereto."

---

## TESTIMONY.

Testimony of William Wingert, (Rec. Pages 72 to 85.) goes into details and shows the Bank building in good physical condition. Testimony of Mish and McCauley states that condition of Bank building is such that it would cost considerable to make modern up-to-date Bank building, but gives no details whatever, does not specify wherein the property needs repairs or improvement. Steffey says in his opinion it would require considerable expense to make repairs, but gives no details; but none of the witnesses for the defense give any details as to why the

Bank is not in good repair, and the Bank has not even called Lamkin, the Contractor, as a witness in support thereof. Neither is any testimony offered by the defense to show that the Bank could not be improved or modified or changed to meet all the requirements of the Bank. On the contrary, the Plaintiff shows by witness Wolf, Middlekauff and Sherley that the walls can be taken out of the first story and the building supported by steel trusses, so as to give all the light that could possibly be gotten into the Bank; that the partition wall between the banking room and Directors room could be taken out and steel trusses substituted for a support of the wall above. In this way it is shown fully by the Plaintiff that it is entirely feasible to give the Bank all the room and light and accommodation it could possibly need without tearing down or destroying the building, because the lot is 240 feet deep and the present building covers only 53 feet of this depth.

Charles McCauley is the Director who, according to the testimony, made the motion in the meeting of the Directors to tear down the present building and to erect a six-story office building, and the evidence shows that he voted 794 shares of stock for the improvements and gave his approval to that amount of stock over his own signature and did it under the supervision of F. W. Mish, the President of the Bank, and presented by Little, Attorney for the Bank at the hearing, and yet as a matter of fact Charles McCauley owns in his own right only 382 shares of stock.

Sarah Hagerman gave her approval (Rec. P. 299) through the U. S. mail in response to an application from the president, F. W. Mish, (Rec. P. 140) to 400 shares and as a matter of fact she owns no stock in the bank. This stock belongs to the estate of her husband (Rec. P. 295) and stands in his name.

The evidence shows further that in obtaining the signatures of the several stockholders there is absence of anything to show that the law on the matter of the right of the Bank to make these contemplated improvements was ex-

plained to the stockholders, neither did the Directors show any specifications or blue print or drawings of the six-story office building, nor did they present any figures or calculations or prospectus showing the advisability of the contemplated improvements from a business standpoint. The plaintiff's counsel contend that the Directors have not the right to make the contemplated changes though the consent of stockholders had been properly obtained, and hence have filed exceptions to all the testimony of the defendants on that point.

Again there is no prospectus or figures or calculations offered in evidence by the Directors to show the advisability of the contemplated changes nor have the Directors offered in evidence any specifications or blue print of the contemplated changes. Their attempt to show that the contemplated changes would lessen the rent of the Bank failed. No figures were shown; nothing was given to show the income from the office part of the contemplated building, nor was anything offered to show the income of the present building; and one witness, Samuel Emmert, when interrogated by Plaintiff's counsel, admitted he did not know what was the income of the present building, though he attempted to testify that the change would lessen the rent of the Bank.

No attempt was made to show what was the income of the present building or what income could be realized out of it by converting the second and third floors into offices as the building stood—at a small outlay—by making these calculations only could the profitableness of the present undertaking be determined.

Charles McCauley attempted to show that contemplated improvements would net five per cent to seven per cent on the cost, but when asked for figures or calculations to demonstrate or prove that statement he did not have them or had not made any figures.

It is quite noticeable that the Directors who have favored the improvements and who testify to the advantages thereof, have invested considerable money in other ways, but have no property coming within the class or sec-

tion of the Bank and have not tried to acquire any therein, though they have invested large sums outside of the County and State. On the other hand, Hays Brothers, composed of Ira W. Hays, Rufus M. Hays and Chester Hays, are now building a new and splendid building on their own lot with their own money and on the same side of the same Street, in the same block, and on just as good location, and they are building their building only three stories, the two upper stories to be rented out for offices and the first story to be used by themselves for business purposes.

Francis H. Miller, the last witness in the case, a very credible citizen and business man, director in First National Bank, and Director in Maryland Surety Company (formerly Eavey, Lane & Co., Bankers,) a man of considerable means which he has acquired by his own efforts has made no calculations as to business and advantages to be obtained by the contemplated changes, though in contemplating business designs of his own he figures very closely on a proposition, testifies that the Maryland Surety & Trust Company (formerly Eavey, Lane & Co., Bankers,) have decided to put in a new vault and enlarge their banking room; their building is only three stories high and directly opposite the First National Bank building and nearer the Court House and has a wider open area on the west side than there is to the First National Bank building and at least as good site for an office building.

Evidence shows that at present time and for an indefinite time there are vacant offices in this Building.

Louis Rose testifies that Hays Brothers are men of excellent business judgment and that S. M. Bloom, who is estimated to be wealthy and by some persons to be worth as much as one million dollars, all or nearly all of which he has made by his own efforts, is a man of excellent judgment, and Mr. Bloom in his testimony for the Plaintiff showed that when he left the Bank as President about two years ago after being President for seventeen years, the

Bank building was then adequate for all the needs of the business. (Rec. P. 95.)

Although F. W. Mish testified that he had made inquiries and had learned that an office building would be advantageous he gave no figures to show it, neither did he produce any one on the witness stand who would rent an office in the building when completed, neither did he show contracts with parties who would accept the offices when completed.

The testimony on these points the counsel for the Plaintiff hold is in admissable because it is *hearsay* evidence. To tear down a good building containing space which could be readily converted into offices and to erect instead an office building on the strength of such statements as these of Mr. Mish just above mentioned, is too ridiculous to be considered for one moment by a capable business man.

Counsel for the Appellant hold that Directors of National Banks hold a fiduciary relationship to the stockholders and that in this case where the statutory provisions on the subject permit them to hold real estate only "for their immediate accommodations in the transaction of their business," it is incumbent upon the Directors to show that they have a right to make the contemplated changes, and that the contemplated changes will produce the results which they claim for them. The Directors have failed to show their right to make the changes; they have failed to substantiate the allegations in their Answer, to-wit, that the Bank was in bad repair, that is to say, they have given no details, have only made the bold statement, much less have they given any proof worthy of the name to show that a prudent man would make these changes or that the Bank's rent will be lessened.

The Court below at the hearing on March 31, 1909, refused the preliminary injunction prayed for in plaintiff's bill and dismissed the restraining order passed on March 10th, 1909. (Rec. P. 51) and from the order an appeal

has been taken (Rec. P. 331 (b) and (c.) This is not all. After the Court announced from the bench that the preliminary injunction was refused and that the restraining order would be dismissed, counsel for the defendants immediately made a motion verbally to the Court to dismiss plaintiff's bill, but the Court refused forthwith to dismiss the bill. (Rec. P. 54, Par. 7 and affidavit P. 56.)

Counsel for plaintiff filed their replication April 3rd, 1909. (Rec. P. 52.)

Counsel for plaintiff and appellant believe that the Court below erred seriously in dismissing the restraining order passed March 10th, 1909 thereby allowing the directors of the bank to proceed with the work of destroying the bank building and erecting the office building, whereas the plaintiff was compelled to stand by with his hands tied, he could get neither forward nor backward, while his property was destroyed and his right of action was being irretrievably impaired, notwithstanding he had complied with every requirement of the law.

Whilst there was nothing to warrant the Court in dismissing plaintiff's bill, yet under the circumstances of this case, when the restraining order was dismissed, the plaintiff's bill should have been dismissed also and then the plaintiff could have applied to the United States Circuit Court of Appeals for protection until the case could be finally determined by that Court.

## RESTRAINING ORDER.

On May 10th, 1909, the plaintiff filed his petition alleging irretrievable impairment of his right of action and asking the Court to preserve unimpaired his right of action, pending the final decree of the Court. Application was denied. Order of denial appealed from (Rec. P. 331.) E)

Hovey vs. McDonald, U. S. 109-150.

May 17th, 1909, plaintiff obtained an order of Court limiting defendant's time to June 3rd, 1909, to take testimony (Rec. P. 58.) May 21st, 1099 defendants obtained

an extension of time to June 12th, 1909 to take testimony. (Rec. P. 60-61,) and did not begin to take testimony until June 2nd, 1909. (Rec. Page 132.) Meantime workmen were industriously tearing down and destroying the bank building. Another extension of time was applied for and obtained on June 12th, 1909. (Rec. P. 61 and 62.)

Then the testimony was filed, application was made at once for a final hearing and after some delay owing to the indisposition of his Honor Judge Morris an order was passed directing counsel for the respective parties to submit the case on or before July 6th, 1909 on briefs. On August 20th, 1909, the opinion of the Court (Rec. P. 324) and an order refusing perpetual injunction prayed for and dismissing plaintiff's bill (Rec. P. 329) were filed on August 21st, 1909, the petition for an appeal was filed and an order granting the appeal passed. The bill in this case was filed in ample time and the plaintiff has exercised all due diligence in prosecuting his case to a final decree.

Opinion of the Court (Rec. P. 324-329.)

Both the language and the meaning of the statute are clear. There is not need of an interpretation. Had there been any doubt or uncertainty about the meaning of the statute, it would have been cleared up long ago by the Courts. There is ample room for and propriety in applying common sense in support of the statute just as it stands.

This case is stronger than the law; it more than meets the requirements of the law. Here is a good building already built and built for a bank building and there was no occasion for destroying it. The Court will look through the testimony in vain to find a good, clear, strong reason for destroying the bank's excellent building. The claim of the directors that the bank is out of sepair is not sustained by the evidence in the case and the testimony of S.M.Bloom shows that when he resigned as president two years ago, the bank building was ample for the needs of the bank. (Rec. P. 94-95.) But this is not all, the plaintiff's witnesses, Sherley, Mac Wolf and Middlekauff, contractors, show that more room and space and light could be given to the

bank without tearing it down and destroying it. John B. Kieffer, Cashier of the Hagerstown Bank shows that the Hagerstown Bank took out the partition between main banking room and directors' room and threw both into the banking room substituting steel girders instead of the partition wall for supports, and put in a new vault at total expense of $25,000. Testimony of Francis H. Miller shows that Eavey, Lane & Co. (Maryland Surety and Trust Co.) is installing a new vault and enlarging and improving banking room by cutting out partitions without destroying their whole building. There was no need to destory the bask's splendid building in this instance. All the needed improvements could have been made without destroying the building.

The burden should be upon the directors to show clearly by the statute and by the facts in the case that they are fully justified before they have a right to go into improvements involving such destruction of property and the diversion of so large amount of money from the legitimate channels of banking. The public has a right to insist that the bank's funds be used in the business and not invested in real estate. See Manderson case page 41 Supra.

The language of the statute is the language of limitations. If the bank under the statute has the right to build a six-story office building, it has the right to build a forty-story building.

If the bank has the right to go into real estate business by building an office building, it has the right to go into the business of developing real estate and promoting. There is a demand at this present moment in Hagerstown for apartment houses and flats, the bank would have just as good right to build an apartment house and flats on their lot behind the bank on that part of the lot not occupied by the bank by its new building, as the bank has to build offices to rent. Their new building occupies less than 100 feet of the bank's 240 foot lot, this would furnish a safe investment for money of the stockholders (McCauley Testimony (Rec. P. )

Testimony of McCauley, Steffey, Miller, Emmert and Mish and Rose on six-story building runs into real estate for the bank.

## COMMON SENSE VIEW IN FAVOR OF STATUTE.

The directors of the bank number eleven. Without William Wingert there are ten. F. W. Mish owns 303 shares, Charles McCauley 392 shares, Wolfgang M. Newcomer 175 shares, J. Grayson Steffey 172 shares, Francis H. Miller 184 shares, C. A. Little 25 shares, C. M. Horst 19 shares,John D. Newcomer 10 shares, Walter D. Wilson 10 shares, Isaac Ankeney 10 shares, three of the ten directors except William Wingert own ten shares each, five of the ten directors own altogether 72 shares, less than 15 shares on an average. Mish, the president, draws a salary, Little, the regular attorney for the bank, draws a salary Steffey and Horst sell builders' material. Steffey had already furnished lumber for the building before his testimony was taken though he seemed to have difficulty in recalling the circumstances. Steffey is of the firm of Steffey and Findlay, and Little is connected with the Findlay family by marriage. John D. Newcomer is Vice President of the bank and employed in the bank on a salary, was for many years Cashier. Wolfgang M. Newcomer is a nephew of John D. Newcomer and the brother of Ezra Newcomer, who now and a long time has been teller of the bank. (Rec. P. 134.) Horst, Steffey and Wilson borrow large sums of money out of the bank regularly. John D. Newcomer told William Wingert before the meeting was called to order, at which it was decided to make the improvements, that he was opposed to them and went into the meeting and voted for the improvements. (Rec. P. 74-75.) William Wingert has persistently voted against the improvements and his vote in opposition is noted on the minutes of the bank. (Rec. P. 154. ) In view of these facts counsel for the plaintiff believe firmly that the clause of the law sought to be enforced in this case is exactly what it should be and common sense if applicable to it, certainly

should sustain it. The president of the bank in addition to owning thirteen farms is conducting lumber operations and advertising through the papers, manufactured lumber, over his signature with office in the First National Bank. (Rec. P. 127 and 149.)

It is believed that the court will be materially aided in considering the case by reading the testimony of Lewis P. Wingert and William Wingert in connection with the testimony of Harvey Heyser, the cashier, on cross examination.

## RECAPITULATION.

The contention of the appelles that the bank was out of repair simply means that they thought the bank should be improved by installing marble counters, marble wainscoting and tile flooring and elaborately frescoed ceilings. These improvements could have been made without demolishing the building. The directors of the Hagerstown Bank, (Record page 120,) had only recently completed extensive improvements to the interior of their bank building, enlarging their banking room by removing a partition wall. The directors of the same bank removed its bank vault and had installed a new and up-to-date steel vault. The Maryland Surety and Trust Company immediately opposite the First National Bank, desiring to enlarge their banking room removed several partition walls, supporting the superstructure with steel girders. The same company removed their bank vault and installed an expensive and elaborate Bank vault of the most modern design. Neither of these institutions destroyed their bank building. The Maryland Surety and Trust Company is a three-story office building and better located for an office building than the First National Bank. It is nearer the Courthouse and the area way on the side is wider than the alley on the side of the First National Bank.

The directors of the First National Bank would have done well to have gotten their common sense view and their good sense from both of the above-named institutions. It is surely good common sense to preserve prop-

erty, not to destroy. It is also good common sense to save money and not to spend it unnecessarily. The Court will listen to the arguments of the Counsel for the appellees in vain for a clear plain reason or justification for destroying the bank's splendid building and for a clear plain justification for diverting from the bank's business the cash funds of the bank necessary to build the office building the bank is building.

C. A. Little is the regular attorney for the bank and a director. All the directors of the bank except Little were produced as witnesses in the case. Little is the one man among the directors who ought to have been able to explain the bank's course and justify it both by fact and by law, yet he was not called to testify. The proposed office building is clearly prohibited by the clause of the National Bank Act in question.

If the Court does not hold that view in this case then there should be required of the directors the clearest and strongest proof of the justification on other grounds. There is no such proof in the record. The mere statement that the building will be well located for an office building, that there have been numerous applications for offices or the expressed opinion that the investment will pay such per cent, without giving names of applicants, without producing any statement of the number of offices to be rented (there is none) or the amount of rent per office (none given) is too chimerical to be seriously considered by an experienced business man.

Counsel for the Appellant hold that there has been no evidence worthy of serious consideration to show the advisability of the investment in this office building.

On the other hand, suppose, for the sake of argument, that the adventure should be a paying investment, is there any guarantee that there may not be built at once another office building just as well located and with as many or more offices in it. The result is easily forseen. Herein lies the objection to the adventure. The evidence shows that William Wingert, (Record page 72,) is a director in the Mutual Insurance Company of (this) Washington

County, and that the Wingert family are largely interested in the Company. It is not in evidence in this case, but it is a fact that the directors of the Mutual Insurance Company, which has a surplus of over $100,000, about one year ago authorized the president to employ an architect to draw plans for an office building. Now the lot on which the said insurance company contemplate building an office building is on the same street and on the same side of the street as is the First National Bank and there is very little difference in the distance of either location from the Courthouse. They are in opposite directions.

This is not in evidence but it serves as a comment on the evidence. Should the Mutual Insurance Company or any other company or individual build an office building in Hagerstown half the offices in either would not be unoccupied.

Herein also Counsel for Appellant contend lies the reason for wording the statute exactly as it is worded. The appellant and his counsel object to the steps taken because they go into real estate, they have purchased bank stock for the very reason that it is not real estate and because it possesses qualities that real estate does not possess. They already own considerable real estate in Hagerstown and do not wish all their eggs in one basket.

The learned Judge of the Circuit Court for the District of Maryland in passing upon the question of the illegality of the Bank's answer has fallen into serious error about the facts involved in the question. The facts are that the bill of Lewis P. Wingert was filed on March 10th, 1909, and the answer of the bank was filed on March 27th, 1909, and the motion ne recipiantur was filed and was heard on March 31st, 1909. Nothing had been done towards the improvements at this time, the improvements were not begun until in May, 1909. The Judge infers that the plaintiff's bill was not filed until after April 13th, 1909. Herein is the error. There is wanting also, evidence to show that the bank's answer was read and approved at the special meeting. Record page 155. The said Judge is also in error in inferring that the plaintiff

was taking exceptions to the filing of the answer. The plaintiff objects to the answer of the bank, not to the filing thereof because the answer of the bank, if adopted at all, was adopted at a special meeting of the directors, of which meeting William Wingert was not notified. Hence the illegality of the answer. F. W. Mish, the president, made an affidavit to the answer alleging that he was duly authorized to sign the answer of the bank and make the affidavit thereto. Record page 23. See explanation of F. W. Mish, Record pages 145 and 146.

Again the learned Judge, in his opinion, speaks of twelve directors. The records show there are only Eleven. Also said Judge in his opinion infers that the appellant is endeavoring to prevent the directors from improving their property where as a matter of fact, the purpose of this suit was to prevent the destruction of the bank's splendid building. Again, the reference is made to the holdings in the bank of the appellant and his family as one-tenth, whereas the evidence shows their holdings to be approximately one-eighth.

The Circuit Court of Appeals adopted the opinion of the learned Judge below without noting the error above mentioned or without correcting it in their opinion.

## IX CONTEMPT.

The directors who have gone ahead and destroyed the bank's splendid building, did it at their own peril and they must take the consequences. The plaintiff's and Appellant's bill was filed in ample time. It was ample warning to them of the consequences of their course and whatever has ben done by the directors, has been done subject to the Equities of the plaintiff's and Appellant's bill. Besides this the defendants and appellees are in contempt of this Court, in destroying the bank's property, and spending the bank's money for the proposed office building when this case was pending. They have virtually said they did not care what would be the final decision

and final decree of the Circuit Court of Appeals and of this high Court.

The dissolving of the restraining order by the Circuit Court for the District of Maryland, on March 31, 1909, Counsel for Appellant think, was a serious error. The question of law raised had never been passed upon by the Federal Courts or by the Supreme Court of the United States. Neither is there anywhere any intimation by this high Court as to what position it would take in regard to the Cluase of the National Bank Act hereby presented for consideration. In allowing the directors of the Bank to destroy their bank building and tc erect the contemplated office building the learned Judge was thereby assuming what would be the final decision in this case.

If in passing upon this case by the Circuit Court for the District of Maryland this Court is hindered by the fact that the bank has been torn down and the erection of the office buildign has advanced or if the plaintiff's case is prejudiced thereby or again, if the lowest court by dissolving the restraining order can defeat the plaintiff's right to relief, or as in this case, can destroy the plaintiff's right of action, then that Court, instead of being a Court of first instance, which it really is, becomes a court of last resort, and the two Courts of Appeal in this instance become nugatory—an astounding spectacle in the high Courts of a great Country.

The Appellant, a stockholder of the Bank, not having consented to or acquiesced in the acts of the directors, is, according to ordinary principles of equity, entitled to an injunction to prevent the directors from destroying the bank's splendid bank building with the intention to erect in its stead an office building.

The written consent of stockholders of the Bank offered in evidence by the defendants was solicited and obtained after the suit was filed and after the restraining order had been passed by the Court and it had been served on the defendants by the Deputy United States Marshal

# INDEX.


| | Pages. |
|---|---|
| Statement | 1-3 |
| Argument | 3 |
| As to Exceptions to Testimony | 3 |
| As to Bank's title to Lot | 3-4 |
| Ultra Vires | 4-9 |
| Location &c. of Bank | 9 |
| Who has right to complain of Ultra Vires Acts? | 12 |

# SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1911.

---

*No.* 176.

---

LEWIS P. WINGERT, APPELLANT,

*versus*

THE FIRST NATIONAL BANK, OF HAGERSTOWN, MARYLAND, ET AL., APPELLEES.

---

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

---

*BRIEF FOR THE APPELLEES.*

---

## STATEMENT.

The First National Bank, of Hagerstown, Maryland, owns a lot of ground in the business center of Hagerstown, nearly opposite the County Court House, adjoining Hotel Hamilton, opposite the Maryland Surety and

Trust Company, and near many of the most important buildings and places of business in the Town.

This lot has been owned and occupied by The First National Bank of Hagerstown, Maryland, for a great many years; it fronts about forty (40) feet on West Washington Street, and runs back two hundred and forty (240) feet to an alley.

At the time of the institution of this suit, there was on the lot a three-story brick building, a photograph of which is found between pages 127 and 131 of the Record. The first floor of this building was used by the Bank for banking purposes, and the remainder of the building was rented to and occupied by tenants of the Bank.

The building had been in use for many years, but little money had been spent in the way of repairs, and the Directors determined that their banking room was not adequate to the business of the Bank. At a regular meeting of the Board, the Directors determined to tear down the old building, and erect in its stead a modern six-story bank and office building, of which the first floor was to be used exclusively by the Bank, and the remaining floors to be rented out for offices. All the Directors of the Bank, except William Wingert, a Director, and brother of the Appellant, voted for these improvements. He voted against them. The Appellant then applied to the Circuit Court of the United States for the Fourth Circuit, in and for the District of Maryland, Baltimore, for an injunction to prevent the Appellees from erecting a new building on their lot as contemplated. Depositions were filed by the respective parties to the cause in support of their views of the case, and upon a hearing of said cause, the Court refused to grant the injunction as prayed. Testimony was taken, the cause brought to a final hearing, and the Court again refused to grant the injunction, and dismiss-

ed the Bill of Complaint. From this decision and order, an appeal was taken to the United States Court of Appeals for the Fourth Circuit, at Richmond, Virginia, and the judgment of the lower Court was affirmed, and from the decision of the Circuit Court of Appeals, this appeal has been taken.

During the litigation above referred to, the Directors proceeded to tear down the old building, and erected a new six-story office and bank building in its stead.

## ARGUMENT.

The Appellant bases his claim for injunction upon the theory that it is *ultra vires* the Bank to erect a building on its said lot to be used for any other than banking purposes. This is the main question before Your Honorable Court.

## FIRST AS TO THE TESTIMONY.

Exceptions have been filed by the Appellees to much of the mass of testimony taken by the Appellants in chief and in the cross-examination of the Appellees' witnesses (Pages 310 to 316 Record). The irrelevancy of the testimony to which exceptions are noted is so apparent as to require no argument.

## SECOND AS TO THE BANK'S TITLE TO THE LOT OF GROUND IN QUESTION.

The second preliminary question has reference to the Bank's title to the lot of ground in question.

The Bill of Complaint alleges that the Bank owns the

lot (Page 3 Record). See also deposition of Complainant (Page 14 Record) and yet the Appellant (Page 15 Record) files a deposition to the effect that the Bank has no deed for the lot. The facts are, on April 28th, 1857, J. Dixon Roman, Trustee, conveyed to The Hagerstown Savings Bank this lot (See Exhibit Deed page 283 Record). The lot is identified by F. W. Mish (Page 136 Record) as the lot now occupied by the Bank. This lot has been in the use and occupation of the Bank since its organization (Page 136 Record). The Hagerstown Savings Bank was converted into The First National Bank of Hagerstown, Maryland, as will appear by Exhibit "Organization Certificate" filed as testimony (Page 290 Record) under which all the holdings, property and property rights of the Hagerstown Savings Bank passed to and became the property of The First National Bank of Hagerstown, Maryland. This, we most respectfully submit, ought to settle the question of ownership of the lot.

The real question at issue is:

Is it *ultra vires* The First National Bank of Hagerstown, Maryland, to tear down the old Bank building on its lot and to erect in place thereof a six-story Bank and Office Building?

We most respectfully submit that it is not.

The Directors of the Bank are charged with a violation of the provisions of Sec. 5137 of the Revised Statutes of the United States, which provides that "a National Bank Association may purchase, hold and convey real estate for the following purposes, and no others.

1st. Such as shall be necessary for its immediate accommodation in the transaction of its business.

2nd. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

3rd. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

4th. Such as it shall purchase at sales, under judgments, decrees or mortgages held by the Association, or shall purchase to secure debts due it, but no such Association shall hold the possessions of any real estate under mortgage, or the title for any possessions of any real estate purchased to secure any debts due it for a longer period than five years.

The wrong complained of has reference more specifically to the first purpose set forth in the Act for which a National Bank may hold real estate.

The Act specifically provides for the purchase and holding of such real estate as may be necessary for it's immediate accommodation in the transaction of its business. This Bank never purchased nor held any other real estate than the lot upon which it has transacted its banking business ever since its organization as a National Bank. It is therefore guilty of no *ultra vires* act in owning and holding the real estate in question, and the violation of the Banking Act, if any such there be, must be found in the act of improving the realty owned, held and occupied by the Bank for many years for its immediate accommodation in the transaction of its business and in adding rooms thereto to be rented out to tenants, and not in the exclusive use of the Bank.

A stockholder can only object to an *ultra vires* act which is clearly beyond the express or implied powers of the Corporation. Section 5137 only prohibits the corpor-

ation from purchasing, holding or conveying land in excess of the amount required for the purposes of the Banking institution. There is not the slightest evidence in this case that the Bank is intending to purchase more land for the purposes of an office building. On the contrary, the land in question was purchased long before the Bank itself came into existence as a National Bank. It is not seeking to hold for purposes other than that of the Bank and there is no evidence to the effect that the lot is larger than is necessary for the purposes of the Bank. The only objection raised in the Bill is as to the Bank's right to *improve* a lot, which it has owned for sixty years. It is therefore submitted that in an action of this kind brought by a minority-stockholder the question of *ultra vires* cannot be raised as the act complained of does not transcend the restrictions of the statute. To hold to the contrary would be to read into the statute the word "improve" where the law simply refers to the right to hold and convey.

The purpose of the restrictions and limitations placed on National Banks with reference to dealings and transactions in real estate is well understood, and it was deemed wise to make them, but it certainly was never intended to extend these restrictions to the limit set up by the Appellants, namely, to prevent the improvement and repair of the building used by the Bank for its immediate accommodation in the transaction of its own business. The liberal construction put upon the act in this particular is manifest in the case of

*Cooper et al. vs. Hill*, 94 *Federal Reporter*, 582.

In this case the Court says "A National Bank which has lawfully acquired the title to property in payment of a

debt, has implied authority to make reasonable repairs thereon for the purpose of putting it in a salable condition, and its directors cannot be held personally liable for money so expended in good faith."

The same liberal spirit is shown in the case of

*National Bank vs. Matthews* 98 *United States Reports*, 621.

In this case, it is true, the Court is dealing with Section 5176 of the National Bank Act, but the same principles of construction are applicable to both sections.

The decisions of the Court in the following cases are to the same effect:

*Reynolds vs. Crawfordsville Bank* 112 *U. S. Reports*, 405.

*National Bank vs. Whitney*, 103 *U. S. Reports*, 99

"A National Bank empowered by its charter to provide real estate necessary for its immediate accommodation in the transaction of its own business cannot interpose the defense of *ultra vires* to a contract made by it to secure the full entrance of light and air into its Banking Home."

*Trustees First Presbyterian Church in Newark vs. National Bank of Newark*, 57 *N. J. Law*, 27 *Atlantic Reporter, Vol.* 29, *page* 320.

*Affirmed in* 58 *N. J. Law*, 406, *Atlantic Reporter*, 36 1129.

*Roebling vs. Richmond First National Bank*, 30 *Fed. Reporter*, 744.

The question as to whether the acts complained of in this case is *ultra vires* has been passed upon by the United States Circuit Court of Appeals in a case almost identical with this case, being the case of

*Brown vs. Schleier, reported in* 112 *Federal Reporter, page* 577 *etc.*

And passed upon by the Court of Appeals in 118 Fed. Reporter, page 981 and especially 984.

This was a case in which a National Bank erected a building on a lot of ground leased by the Bank and the question was raised as to whether the Bank had power to do so. In the Court's opinion is found this language. "nor do we perceive any reason why a National Bank when it purchases or leases property for the erection of a Banking Home should be compelled to use it exclusively for banking purposes. If the land which it purchases or leases for the accommodation of its business is very valuable, it should be accorded the same rights that belong to other land owners of improving it in a way that will yield the largest income, lessen its own rent and render that part of its funds which are invested in realty most profitable. There is nothing, we think, in the National Bank Act, when rightfully construed, which precludes National Banks so long as they act in good faith from

pursuing the policy above outlined." The Court in this same case says further: "This act ought not to be construed in such a way as to compel a National Bank when it acquires Real property for a legitimate purpose, to deal with it otherwise than a prudent land owner would deal with such property." This case was afterwards passed upon by this Honorable Court

in 118, *U. S. Reports, folio* 18,

and although the question at issue in this case was not passed upon by this Court it does say that the proceedings referred to were not *ultra vires*.

The case at bar comes directly within the rulings of the Court in the case of Brown vs. Schleier. The only difference being that in the case of Brown vs. Schleier the building was erected on leasehold property just acquired, whereas in this case the Appellees are simply putting up a new building on a lot of ground owned by it for many years, or in other words, simply improving its own property.

The Bank is located in the center of the business section of Hagerstown. See plat, between pages 22 and 23 Record, and plat between pages 119 and 127 Record, and pages 32, 34, 35, 36, 38, 64, 137, 141, 242, 248, 262, 268 and 274, Record.

Hagerstown is a rapidly growing business and manufacturing Town and Railroad center, and has a population of about 18,000. (Pages 32, 33, 35, 36, and 38 Record)

The Bank's lot without any improvements is worth from $35,000.00 to $40,000.00. (Pages 33, 34, 36, 37, 39, 64, 88, 93, 95, 141 and 235 Record). The income from the rents of the portion of the Building not used by the Bank

will be such as to virtually give the Bank a Banking room free of cost. (Pages 33, 34, 36, 37, 39, 141, 142, 146, 242, 243, 247, 251 and 274 Record).

The investment will be a good one, and the best that can be made of the funds of the Bank. (Pages 32, 34, 35, 37, 38, 141, 142, 146, 162, 235, 243, 247, 248, 257, 258, 259, 262, 263, 268, 269 and 274 Record). The Building is situated in the part of the Town where offices are in great demand. (Pages 32, 34, 35, 37, 38, 142, 146, 235, 248, 257, 258, 262 and 269 Record).

The Directors of the Bank believe that they will have no trouble in renting the offices and believe that the income derived therefrom will be greater than that which would be derived from investing the same amount of money in the ordinary way.

The Directors of the Bank were influenced by these considerations when they determined to make the improvements. The Directors acted in good faith and followed their best judgment in the matter.

The question of making the improvements to the Bank's building was virtually determined upon in January 1909, and at a special meeting later in the same month, it was again determined to tear down the old building and erect in its place a six-story Building (Pages 74, 75 and 85 Record). At meetings on the 2nd and 9th of March, 1909, respectively, the matter was again passed upon and the building as hereinbefore set forth was determined upon. (Pages 137 and 138 Record). The only person voting against the contemplated improvements was William Wingert, a Brother of the Complainant. (Pages 138 and 152 Record). Again after the suit was brought, the Board determined to proceed with the improvements as contemplated. (Pages 138 and 152 Record).

When the Directors found that one of its number was opposed to the improvements, to further show their good faith in the matter, the opinion of the Comptroller of the Currency was sought and the Comptroller replied by referring, to the case of Brown vs. Schleier (Page 41 Record). The Directors then submitted the question of the contemplated improvements to the Stockholders of the Bank and a majority of the Stockholders approved of the course of the Directors. (Page 299 Record) (and see Page 294 for list of stockholders).

In offering the Exhibit "Consent of Stockholders" the Appellee does not admit that it was really necessary to get the consent of the Stockholders. It was done simply to show good faith on the part of the Directors. The Directors are the proper persons authorized to manage the internal affairs of a corporation, and we submit that they had full power to determine upon and carry out the contemplated improvements without consulting the stockholders, but, desiring to know the feeling of the Stockholders, they consulted them, thereby showing their good faith and their desire to act in accordance with the wishes of the majority of the Stockholders.

A minority Stockholder does not have the power to interfere with and impede the work of a Board of Directors of a corporation in the manner contemplated by this suit. The danger of this contention is fully set forth in the case of

*Shaw vs. Davis*, 78 *Md.* 308.

in which the Court says on page 316 of its opinion "And first, it may be stated as the result of all authorities that whenever any action of either directors is relied on in a suit by a minority stockholder for the purpose of invok-

ing the interposition of a Court of Equity if the act complained of neither be *ultra vires*, fraudulent or illegal, the Court will refuse its intervention because powerless to grant it, and will leave all such matters to be disposed of by the majority of the stockholders in such manner as their interests may dictate and their action will be binding on all whether approved by the minority or not."

If such were the case, then as the Court observes in the last mentioned case on page 317 of its opinion. "Now if that gives a right to every member of the company to file a Bill to have the question decided, then if there happens to be a cantankerous member, or one member who loves litigation everything will be litigated."

In the case at bar, if the views of the Appellant are to be sustained, then one Stockholder of this Bank will be given the authority and power to override the views, opinions and purposes of all the Directors of the Bank, excepting the one with whom he agrees, and the views of the Board of Directors and the Stockholders will be of no avail. The evils resulting from such a state of affairs are too apparent to admit of further argument.

## WHO HAS THE RIGHT TO COMPLAIN OF ULTRA VIRES ACT?

Even if the acts of the Directors of the Bank are *ultra vires*, is a Stockholder of the Bank the proper person to complain?

If the acts are *ultra vires*, they must be so by reason of a violation of the United States Statute which limits and prescribes the powers of the National Bank, and not

by reason of any relations or matters of contract existing between a Stockholder and the Corporation.

If the act is *ultra vires*, the sovereign power is the proper and only party to complain. If the Directors committed an *ultra vires* act in this case, it must be in violation of Section 5137 of the National Bank Act, dealing with powers of National Banks with reference to Real Estate. In

*National Bank vs. Matthews*, 98 *U. S. Reports*, 628, the Court says:

"Where a Corporation is incompetent by its charter to take a title to real estate, a conveyance to it is not void but only voidable, and the sovereign alone can act. It is valid until assailed in a direct proceeding instituted for that purpose." The Court further says in this case, quoting from Chancellor Kent, "Perhaps it would be sufficient for this case that the Plaintiffs are a duly incorporated body with authority to contract and take mortgages and judgments and if they should pass the exact line of their power it would rather belong to the Government of Pennsylvania to exact a forfeiture of their Charter than for a Court in this collateral way to decide a question of misuser by setting aside a just and bona fide contract."

The Court says in

*National Bank vs. Whitney*, 103 *U. S. Reports*, 102

"And after citing numerous cases where a disregard of statutory prohibition has not been held to vitiate the con-

tracts of parties but only to authorize actions of the Government against them, the Court held that the prohibitory clause of the Banking law did not vitiate the Real Estate securities taken for loans and that a disregard of them only laid the association open to proceedings by the Government." "The impending danger" said the Court, "of a Judgment of Ouster and Dissolution was, we think, the check and none other, contemplated by Congress." That has been always the punishment prescribed for the wanton violation of a Charter, and it may be made to follow whenever the proper public authority shall see fit to enforce its application."

The construction of the Act of Congress thus given has been acted upon by the National Banks throughout the country ever since it has been published. It is not unreasonable to suppose that they have conducted their business and made their loans to a large amount in reliance upon it, and that in many cases great injury would follow a departure from it.

Judicial decisions affecting the business interests of the country should not be disturbed except for the most cogent reasons, certainly not because of subsequent doubt of their power.

The prosperity of a commercial community depends in a great degree upon the stability of the laws by which its transactions are governed. If there should be a change, the Legislature can make it with infinitely less derangement of these interests than would follow a new ruling of the Court for statutory regulations would operate only in the future.

The decision in the case cited controls the present case, and in conformity with it we must hold that the mortgage to the Bank so far as its subsequent encumbrances are concerned, is to be regarded as a valid se-

curity for the future advances to the mortgagor. Whatever objections there may be to it as security for such advances from the prohibitory provisions of statutes, the objection can only be urged by the Government.

*Reynolds vs. Crawfordsville Bank* 112 *U. S. Reports*, 413.

Whatever punishment is to be meted out to the Bank and its directors for a violation of the Banking Act must come from the sovereign power whence the Bank obtained its powers and not from an individual or private person.

*In Hagerstown Manufacturing Company versus Keedy*, 91*st Md., page* 430.

It is held, "When a corporation is authorized by its charter or by general statute, to hold land for some purpose, its right to take and hold any particular parcel can only be called in question by direct proceedings instituted by the State.

"The beneficial Association thus having by law the capacity to purchase and hold real estate under some circumstances, and having purchased the lots of ground in controversy, and taken a conveyance of them, the question remains whether in the absence of fraud, the Appellee as its assignee is entitled to maintain the present bill upon the mere ground that the Association exceeded its powers in making the particular purchase. The weight of authority is plainly against the right of the Appellee to do so.

"It has been repeatedly held in Maryland and elsewhere, that when a corporation has, by its charter or by general statute, power to hold land for some purpose, or to a limited extent, its right to take and hold any partic-

ular parcel of land is a matter solely between the corporation and the State, and can be called in question only in a direct proceeding by the State for that purpose."

Quoting Cowell versus Colorado Springs Company, 100 U. S. 55; Hamsher versus Hamsher, 132 Ill. 237, and other Maryland cases.

The Court further says, "The doctrine that even where a corporation has no power to take or hold real estate, a deed made to it is not void but voidable, and that only at the suit of the State, has found strong support."

*Quoting Union National Bank versus Matthews,* 98 *U. S.* 623;

*Reynolds versus First National Bank,* 112 *U. S.* 405 and

*Fritts versus Pullman Company,* 132 *U. S.* 282.

We submit, however, that a recent decision by your Honorable Court is conclusive of the question here involved. We refer to the case of Robert Earl Kerfoot vs. Farmers & Merchants Bank et al. 218 U. S. 281. In this case a number of the authorities above referred to are quoted. In that case the decision of the Court is clearly to the effect that even if the Appellee has been guilty of an *ultra vires* act in the matter complained of, the sovereign alone can object.

We therefore most respectfully submit that the judgment of the District Court and of the United States Circuit Court of Appeals ought to be affirmed.

CHARLES A. LITTLE,

GEORGE R. GAITHER,

Solicitors for the Appellees.

# WINGERT *v.* FIRST NATIONAL BANK OF HAGERSTOWN.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 176. Argued February 29, 1912.—Decided March 11, 1912.

After filing of a bill for injunction, defendants proceed at their peril, and even if no preliminary injunction is issued, if they inflict actionable wrong upon the plaintiff, the bill can be retained for assessment of damages; but if the only ground left for further prosecution is costs, the appeal will be dismissed.

Where pending trial below and hearing of appeal the object unsuccessfully sought to be enjoined has been accomplished—in this case the erection of a building by a bank—the only ground left for further prosecution is costs, and the appeal will be dismissed.

An action by a stockholder for injunction against a national bank and its directors to restrain them from materially altering the bank building will not be transmuted into an action for damages against the directors for so doing; such an action will not lie.

Appeal from 175 Fed. Rep. 739; 99 C. C. A. 315, dismissed.

THE facts, which involve the power of directors of a national bank to alter its building against the protest of a minority of its shareholders, are stated in the opinion.

*Mr. Henry F. Wingert*, with whom *Mr. Miller Wingert* was on the brief, for appellant.

*Mr. Charles A. Little* and *Mr. George R. Gaither* for appellees.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill to restrain the defendants, a national bank, its directors and a contractor employed by them, from pulling down the bank building and erecting a six story building in its place—the first floor to be used for banking purposes, the other floors to be let for offices. The plaintiff is a holder of stock in the bank and alleges that the intended construction is *ultra vires*, and commercially unwise. The Circuit Court dismissed the bill on the ground that in the absence of bad faith it would not revise the judgment of the majority of the directors on the question of policy and that a national bank lawfully might turn its building to the best account by adding upper stories for offices to let. The Circuit Court of Appeals affirmed the decree on the opinion below. 175 Fed. Rep. 739. 99 C. C. A. 315. Pending the litigation the new structure has been built.

Objections are interposed on both sides—on the part of the defendant, to the right of a stockholder to prevent by injunction acts beyond the power of the corporation, on

that of the plaintiff, to the reception of the bank's answer, because it was adopted at a meeting of which the plaintiff's brother, a protesting director, was not notified. Without giving the slightest countenance to either it is enough to say that the whole case is disposed of by the erection of the new bank. No doubt after the filing of a bill for an injunction defendants proceed at their peril even though no injunction is issued, and, if they go on to inflict an actionable wrong upon the plaintiff, will not be allowed to defeat the jurisdiction of the court by their own act. In such a case the bill will be retained for the assessment of damages. *Milkman* v. *Ordway*, 106 Massachusetts, 232, 253. *Lewis* v. *North Kingstown*, 16 R. I. 15. But in the present matter the only ground for further prosecution of the case is costs. There are no damages for which the plaintiff could make any claim against the corporation for doing as it saw fit with its own, lawfully or unlawfully. Furthermore a recovery would be futile. It would cost the plaintiff as much as it brought in. To transmute the cause of action into a demand for damages against the directors alone would be an essential change, and probably would do the plaintiff no good, as it has been held in well considered cases that that action also would not lie. *Smith* v. *Hurd*, 12 Met. 371. *Allen* v. *Curtis*, 26 Connecticut, 456. As the appeal really is prosecuted only for costs it must be dismissed. *Union Paper-Bag Machine Co.* v. *Nixon*, 105 U. S. 766. See *Richardson* v. *McChesney*, 218 U. S. 487. But we are far from intimating that the plaintiff loses anything by this disposition of the case. *Brown* v. *Schleier*, 118 Fed. Rep. 981.

*Appeal dismissed.*